

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



# No. 76-4135

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United States Court of Appeals  
FOR THE SECOND CIRCUIT

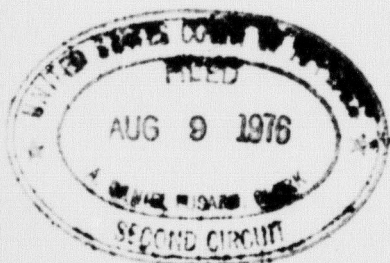
THE TORRINGTON COMPANY,  
*Petitioner,*

—and—

NATIONAL LABOR RELATIONS BOARD,  
*Respondent.*

ON PETITION TO REVIEW AND SET ASIDE AN ORDER  
OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX



JAY S. SIEGEL  
SIEGEL, O'CONNOR AND KAINEN  
60 Washington Street  
Hartford, Connecticut  
*Attorneys for Petitioner*

B  
P/s

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CHRONOLOGICAL LIST  
OF  
RELEVANT DOCKET ENTRIES

- 05/09/74 Union files first charge with National Labor Relations Board) Case No. 1-CA-9811)
- 06/12/74 Employer's Statement of Position and attached Affidavit in Case No. 1-CA-9811
- 06/18/74 Regional Director's letter stating charge had been withdrawn without prejudice
- 06/27/74 Union's letter request for information on four non-union plants
- 07/09/74 Employer's letter requesting case authority upon which Union based request
- 08/05/74 Union Counsel's letter listing case authority
- 09/23/74 Employer's letter response challenging legal basis for request
- 10/03/74 Union files second charge with NLRB (Case No. 1-CA-10,137)
- 12/13/74 Regional Director's dismissal of complaint
- 01/03/75 Union appeals Regional Director's decision
- 03/03/75 General Counsel's decision denying in part and sustaining in part Union's appeal
- 05/01/75 Regional Director's complaint and notice of hearing
- 05/07/75 Employer's answer to complaint
- 06/24/75 Hearings before Administrative Law Judge in Hartford, Connecticut
- 10/17/75 Decision of Administrative Law Judge
- 11/25/75 Employer timely files exceptions and supporting brief with Board in Washington to decision of Administrative Law Judge

- 12/03/75 Employer's request to General Counsel for consent to have Regional Director produce file for Employer's inspection in Case No. 1-CA-9811
- 12/04/75 Union's objection to Employer's request for consent to have Regional Director produce file in Case No. 1-CA-9811
- 12/10/75 Employer's response to Union's objections
- 12/30/75 General Counsel's ruling denying Employer's request
- 05/03/76 Decision and Order issued by National Labor Relations Board
- 05/26/76 Employer files Petition for Review
- 06/28/76 Cross-Application for enforcement of order filed by General Counsel

# **PART A**

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
FIRST REGION

Case No. 1-UC-55

In the Matter of  
THE TORRINGTON COMPANY  
*Employer*  
and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA  
(UAW) AND ITS LOCAL 1645 <sup>1</sup>

*Petitioner*

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, a hearing was held before a Hearing Officer of the National Labor Relations Board. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this case, it is found:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner proposes to clarify the current bargaining unit at the Employer's Standard Plant in Torrington, Connecticut by including employees of the Em-

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<sup>1</sup> The name of the Petitioner appears as amended at the hearing.

ployer who are engaged in production work at a plant acquired by the Employer at Waterbury, Connecticut in May, 1968.

The Petitioner contends that the Waterbury plant to which the Employer removed an entire operation from its Standard Plant at Torrington is an accretion thereto and that, pursuant to a collective bargaining contract, the Employer has agreed to recognize the Petitioner as bargaining representative of the employees of such a plant as part of the bargaining unit at the Standard Plant.

The Employer moves dismissal of the petition on the grounds that the Waterbury plant is not an accretion, but, rather a completely separate operation that is neither an extension nor an enlargement of its Standard Plant; and that the matter involves a question of representation which may not be handled under a petition for clarification of unit.

There is no other labor organization involved.

The Employer maintains four plants in Torrington, Connecticut, namely: the Excelsior Plant with about 1000 production and maintenance employees; the Broad Street Plant with about 400 production and maintenance employees; and the Standard Plant with about 1200 production and maintenance employees each of which has a separate bargaining contract with the Petitioner; and the Wire Mill with about 100 employees which is unrepresented.

At the Excelsior Plant, needles are manufactured; at the Broad Street Plant, bearing components and loose rollers; at the Standard Plant, bearings, special metal products, and industrial sewing machines; and at the Wire Mill, drawn wire.

The employees at the Standard Plant are represented by the Petitioner. The record fails to reflect a descrip-

tion of the bargaining unit as originally constituted, however, the current contract, executed on April 20, 1967, recognizes the Petitioner as representative of all production and maintenance employees of the Standard Plant, excluding office, clerical and salaried employees, timekeepers, firemen, engineers, gatemen, watchmen, guards, executives, foremen, assistant foremen and subforemen. The contract expires on May 16, 1970.

The Employer maintains at Waterbury, Connecticut, about 26 miles from Torrington, a plant, known as the Vaill operation or Machinery Division, which was acquired in May, 1968 and where the Employer manufactures tube forming machinery, swaging machinery, and special machinery.

At that time, tube forming machinery was manufactured by the former owners with about twelve employees. Such machinery expands, flares, flanges and bends tube. The Employer had never manufactured such machinery and purchased the Vaill operation to expand its manufacturing operation. At that time, however, the Employer did manufacture swaging machinery at its Standard Plant in Torrington. Such machinery reduces the diameter of tube and bar stock by rotary hammer. This combination of tube shaping machinery provides a complementary product line.

In November, 1968, the Employer removed the entire swaging manufacturing operation from the Standard Plant to the Vaill operation at Waterbury. The twenty-two employees on the swaging operation at the Standard Plant were afforded an opportunity to follow their jobs to Waterbury. As a result, five bargaining unit employees elected at that time to transfer permanently; two others transferred in recent months. Today, there are a total of sixty-five employees at the Waterbury plant, of which thirty-one are production and maintenance employees. About one-half of the production at Waterbury

is the tube forming machinery; the other half is the swaging machinery.

The product lines at the Torrington plants differ from those at Waterbury. The Standard Plant, as a subcontractor using its tape control machine, supplies about 15 percent of the components for the swaging machinery which is completely assembled at Waterbury and shipped therefrom. The Standard Plant is selected as the source of these components because it is the least expensive producer.

The Machinery Division at Waterbury operates as a separate facility under its own Division Manager and supervisory staff whose responsibility is limited to the Waterbury plant. The job classifications at Waterbury are basically the same as at the Standard Plant, but the wage rates at Waterbury are higher. Fringe benefits are the same for all operations of the Employer in Connecticut. The Waterbury plant hires its own employees. Waterbury employees work from 8:00 a.m. to 4:30 p.m. with a half hour lunch period; the Standard Plant employees work from 7:40 a.m. to 4:40 p.m. with an hour lunch period.

3. The record clearly reveals that the Machinery Division in Waterbury is a separate operation physically, functionally and administratively, from the Standard Plant in Torrington and is under independent supervision. In view of the number of employees in the bargaining unit at the Standard Plant, about 1200, and the removal of only one production process, swaging machinery, which engaged only about twenty-two employees while located at the Standard Plant, the extent of the transfer to Waterbury, which now has about thirty-one production and maintenance employees, of whom only about five accepted transfer originally, is insubstantial. These thirty-one employees include employees of the Employer's predecessor and others who were unrepresented.

Also, they are engaged on a consolidated product line, half of which was acquired by the purchase of the Waterbury plant, thus giving the facility the character of a new operation. In addition, there is no interchange of employees between the Waterbury plant and the Standard Plant located 26 miles away. Under these circumstances, it is clear that the Waterbury plant is not an accretion to the Standard Plant. *Comptometer Corporation*, 135 NLRB 74, 76; *Pacific States Steel Corporation*, 134 NLRB 1325.

Article XV, Section 2 of the current contract provides for recognition by the Employer of the Petitioner as bargaining representative of any employees who follow a transfer of operations from its existing plant to a plant thereafter acquired by the Employer within a radius of 75 miles from Torrington, "if it is not illegal to do so." The Board has held that transfers may not be treated differently from others doing similar work solely because they had once been represented by a labor organization in a bargaining unit under quite different considerations. *Chrysler Corporation*, 140 NLRB 1024, 1026. It may be argued that such a provision could be interpreted to encompass all production employees at the acquired plant rather than the transferees only. However, such a contractual provision would control a resolution of the issue raised herein, as neither an employee nor a labor organization, nor the two acting in concert, has any right under the Act, except as provided in Section 8(f), not applicable here, to select and determine the bargaining agent of employees. *Worcester Stamped Metal Company*, 146 NLRB 1683, 1686, ftn. 1. The parties' own language "if it is not illegal to do so" acknowledges that the Act takes precedence over any agreement between an employer and a labor organization.

Accordingly, since it is found that the petition for clarification of the bargaining unit raises a question

concerning representation which may not be resolved through a clarification of existing unit, the petition is hereby denied.

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

/s/ Albert J. Hoban  
Albert J. Hoban  
Director  
National Labor Relations Board  
Region One  
Boston, Massachusetts 02203

Dated at Boston, Massachusetts, this 1st day of August, 1969.

January 16, 1974

Mr. Angelo Franculli  
Shop Chairman  
Standard Plant

Dear Mr. Franculli:

Since last August the Company and the Union held a series of meetings concerning the Company's plan to use the Bonnie Mills facility for the assembly and some manufacturing or rear wheel bearings. It now appears that the transfer of this operation from the Standard Plant will be accompanied sometime before the end of this month. In any event, meetings with the employees affected by the transfer are scheduled to begin this week.

The Union's Standard Plant Committee, will as agreed, be present at such meetings, along with Company representatives. Details of the transfer of this operation will be explained to the employees so that they can make a judgment as to whether or not they will agree to work at the new facility.

It is the Company's understanding that the Parties have agreed to the following conditions concerning this move:

1. A Rear Wheel Bearing Department will be established at Bonnie Mills.
2. This Department will be part of the Standard Plant and the employees will be covered by the terms and provisions of the Standard Plant Collective Bargaining Agreement.
3. The Bonnie Mills facility will be serviced by Standard Plant Maintenance Department personnel.
4. Employees will be offered transfer with their presently existing job classifications in the following manner.

- (a) Employees presently working in jobs involving rear wheel bearings will be given the transfer opportunity on a voluntary basis in order of highest seniority.
- (b) If manpower requirements are not satisfied by voluntary transfers, the lowest seniority employees will be transferred on an involuntary basis unless they can be absorbed in their present jobs.
- (c) Employees who do elect to transfer will carry their present job classification, department and plant seniority with them to the new seniority department.
- (d) The same seniority treatment will be accorded to other employees who wish to fill any additional openings at Bonnie Mills which may occur in their job classifications within a 90 day period after the initial transfers are made.
- (e) Similarly, if there is a need to reduce manpower within the same 90 day period, employees who have transferred to Bonnie Mills will be restored to their jobs in the Standard Plant with full seniority.
- (f) This will be a two shift operation and shift preference within a job classification will be determined on the basis of plant seniority among those employees agreeing to transfer.
- (g) Any new hires at Bonnie Mills will accumulate seniority in the new department.
- (h) Because it is impossible to predict the future of the Rear Wheel Bearing Operation at Bonnie Mills, it is agreed that employees who transfer to Bonnie Mills will enjoy retransfer rights back to their old departments with their sen-

iority present, as well as accumulated at Bonnie Mills, intact, should the Rear Wheel Bearing Department be phased out.

- (i) Any individual work force reductions would be made in accord with the displacement provisions of the Standard Plant contract.

Please let me know if any of the foregoing is not in agreement with your understanding.

Yours very truly,

William G. Milligan  
Manager, Labor Relations

cc: D. Geiger

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

*INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.*

DO NOT WRITE IN THIS SPACE

Case No.—1-CA-9811

Date Filed—May 9, 1974

1. EMPLOYER AGAINST WHOM  
CHARGE IS BROUGHT

- a. Name of Employer—Torrington Company, Standard Plant, Et Al
- b. Number of Workers Employed—1800
- c. Address of Establishment (Street and number, city, State, and ZIP code)—Industrial Relations Division, 59 Field Street, Torrington, Ct. 06790
- d. Employer, Representative to Contact—Joseph J. Palker, Director of Industrial Relations
- e. Phone No.—203-482-4441
- f. Type of Establishment (Factory, mine, wholesaler, etc.)—Factory
- g. Identify Principal Product or Service—Anti-Friction Bearings & Specialty Products
- h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair

labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The Company is refusing to bargain with the Union with reference to its Standard Plant Operations located in Waterbury, Thomaston, Bantam and Morris, Connecticut.

The above plants are covered by the current collective bargaining agreement.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)—Local 1645, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America—UAW
- 4a. Address (Street and number, city, State, and ZIP code)—100 Prospect Street, Torrington, Connecticut 06790
- 4b. Telephone No.—203-489-7983
5. Full Name of National or International Labor Organization of Which it Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)—International Union, United Automobile, Aerospace & Agricultural Implement Workers of America—UAW

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ Angelo G. Franculli  
President

100 Prospect St., Torrington, Connecticut 06790

203-489-7983

May 8, 1974

Willfully False Statements on this Charge Can  
Be Punished by Fine and Imprisonment (U.S.  
Code, Title 18, Section 1001)

[SEAL]

NATIONAL LABOR RELATIONS BOARD  
REGION 1

Bulfinch Building, 15 New Chardon Street  
Boston, Massachusetts 02114

Telephone (617) 223-3300

Jay S. Siegel, Esquire  
Siegel, O'Connor and Kainen  
60 Washington Street  
Hartford, CT 06106

June 18, 1974

Re: Torrington Company, Standard Plant, et al  
Case No. 1-CA-9811

Dear Sir:

This is to advise you that the Charge in the above matter has, with my approval, been withdrawn without prejudice.

Very truly yours,

/s/ Robert S. Fuchs  
Robert S. Fuchs  
Regional Director

[SEAL]

UNITED AUTOMOBILE - AEROSPACE -  
AGRICULTURAL IMPLEMENT WORKERS *of*  
AMERICA (UAW)  
LOCAL 1645—UAW  
100 Prospect St., Torrington, Conn.  
Telephone 489-7983

June 27, 1974

Mr. Joseph J. Palker  
Director of Labor Relations  
The Torrington Company  
59 Field Street  
Torrington, Connecticut 06790

Dear Mr. Palker:

With reference to our letter to you of April 3, 1974 concerning the Torrington Company's operations at Waterbury, Thomaston, Bantam and Morris, Connecticut, please be advised that the Union hereby requests the information set forth hereinbelow in order to police and administer intelligently Article I, Article III and Article XV, Section 15.2 of our Standard Plant contract since all of the aforesaid operations are within a radius of seventy-five (75) land miles from the center of the City of Torrington:

1. The date that each of the above operations was acquired;
2. The method of acquisition and the party from whom each operation was acquired;
3. The reason that each operation was acquired;
4. The date or dates that operations from the Standard Plant, if any, were transferred to each of the above operations with a full description of each such operation including, but not limited to, the volume of work involved;

5. The same information as requested in paragraph 4 hereinabove with respect to any transfer of bargaining unit employees in connection with transfer of operations including, but not limited to, names of such employees;

6. The number of employees working at the Waterbury, Thomaston, Bantam and Morris operations at the time of acquisition and at the present time;

7. The volume of production of each product being manufactured at the Waterbury, Thomaston, Bantam and Morris operations at the time of acquisition and at the present time;

8. The products being manufactured at the Waterbury, Thomaston, Bantam and Morris operations at the time of acquisition and at the present time;

9. The names of any bargaining unit employees who perform work both at the Standard Plant in Torrington and at any of the aforesaid four operations;

10. The name, description and volume of each product, if any, which is partially processed at the Standard Plant in Torrington and also is partially processed at one or more of the four aforesaid operations including, but not limited to, a description of each such partial process;

11. A complete description of the wage scale paid to all hourly rated employees at Waterbury, Thomaston, Bantam and Morris;

12. A complete description of any and all fringe economic benefits, if any, available to hourly rated employees at Waterbury, Thomaston, Bantam and Morris;

13. A complete description of any and all non-economic benefits available to hourly rated employees at Waterbury, Thomaston, Bantam and Morris including, but not limited to, seniority benefits; and

14. Photocopies of any and all company records wherein the information requested in paragraph 1 through 13 hereinabove is contained.

Very truly yours,

/s/ Angelo Franculli  
Angelo Franculli,  
President

opeiu 376

cc: William S. Zeman, Esq.

REGISTERED MAIL  
RETURN RECEIPT REQUESTED

bc: J. Siegel

July 9, 1974

Mr. Angelo Franculli, President  
Local 1645, UAW  
100 Prospect Street  
Torrington, Connecticut

Dear Mr. Franculli:

Your recent letter of June 27 addressed to Mr. Palker has been referred to me for reply.

We seriously challenge the legal basis behind your request for information regarding the Company's plants in Thomaston, Bantam, Morris and Waterbury notwithstanding Section 15.2 of the Standard Plant contract.

It continues to be the Company's position that it is under no legal obligation to deal with your Union for these plants. Under the interpretation accorded Section 15.2 by the NLRB Regional Director in Boston in Case Number 1-UC-55, we are not required to deal with your Union for any such plants of the Company within the 75 mile radius of Torrington. This is particularly so in view of your recent withdrawal of unfair labor practice charges alleging a refusal to bargain by the Company with Local 1645 in connection with those plants.

Before we can give serious consideration to your request or any portion thereof, we will require your outlining in detail and with case authorities, the basis under which you claim a legal right to obtain the data you seek at the plant locations mentioned in your letter.

Yours very truly,

William G. Milligan  
Manager, Labor Relations

ZEMAN, DALY AND SILVESTER  
Attorneys and Counselors at Law  
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Telephone  
(203) 521-4430

Hartford Office:  
101 Pearl Street  
Hartford, Conn. 06103  
Tel: (203) 278-2650

—  
Ruth H. Mantak

August 5, 1974

Mr. William G. Milligan  
Manager, Labor Relations  
The Torrington Company  
59 Field Street  
Torrington, Connecticut 06790

Dear Sir:

Your letter of July 9, 1974, addressed to Angelo Franculli, President of Local 1645 UAW, has been referred to the undersigned for reply.

The purpose of the Union's request for information as set forth in its June 27th letter of Mr. Palker was to obtain information necessary to police and administer intelligently Article XV, Section 15.2 of the Standard Plant Contract. The following cases, in my opinion, support the Union's legal right to obtain said information:

*Fafnir Bearing Co.*, 56 LRRM 1108, 146 NLRB No. 179, aff'd 62 LRRM 2415 (2nd Cir.);

*Lasko Metal Products, Inc.*, 57 LRRM 1108, 148 NLRB 976;

*Crispo Cake Cone Co.*, 77 LRRM 1195, 190 NLRB No. 60;

*Plywood Aircraft Corp.*, 77 LRRM 1785, 192 NLRB No. 62;

*Ohio Medical Products*, 78 LRRM 1488, 194 NLRB No. 1;

*American Beef Packers, Inc.*, 78 LRRM 1508, 193 NLRB No. 170;

*Royal Himmel Distilling Co.*, 79 LRRM 1382, 195 NLRB No. 1;

*Zink Co.*, 80 LRRM 1232, 196 NLRB No. 135;

*Herk Elevator*, 80 LRRM 1448, 197 NLRB No. 20;

*Fawcett Printing Co.*, 82 LRRM 1661, 201 NLRB No. 139;

*Seeburg Corp.*, 82 LRRM 2225 (Dc-Cir.).

In the case of *Fafnir Bearing Co.*, supra, the United States Court of Appeals for the 2nd Circuit stated the following on page 2418 of 62 LRRM:

"... An employer's duty to provide relevant information to union representatives so that they can effectively bargain on behalf of their members has been established beyond question. See *N.L.R.B. v. Truitt Mfg. Co.*, 351 U.S. 149, 38 LRRM 2042 (1956); *N.L.R.B. v. Whittin Mach. Works*, 217 F.2d 593, 35 LRRM 2215 (4th Cir. 1954), cert. denied 349 U.S. 905, 35 LRRM 2730 (1955); *N.L.R.B. v. New Britain Mach. Co.*, 210 F.2d 61, 33 LRRM 2461 (2d Cir. 1954); *N.L.R.B. v. Jacobs Mfg. Co.*, 196 F. 2d 680, 30 LRRM 2098 (2d Cir. 1952); *N.L.R.B. v. Yawman & Erbe Mfg. Co.*, 187 F. 2d 947, 27 LRRM 2524 (2d Cir. 1951)."

In the light of the rule laid down by both the NLRB and the federal courts in the above cited cases, it is the position of the Union that it is entitled to the information requested in its letter of June 27th in order that it may carry out its statutory duty under the Na-

tional Labor Relations Act to police and administer Article XV, Section 15.2 of the Standard Plant Contract.

Would you kindly, therefore, furnish said information as already requested by the Union.

Very truly yours,

/s/ William S. Zeman  
William S. Zeman  
Counsel for Local 1645 UAW

WSZ:mr

cc: Mr. Angelo Franculli, President, Local 1645 UAW

September 23, 1974

William S. Zeman, Esq.  
Zeman, Daley and Silvester  
18 North Main Street  
West Hartford, Connecticut

Dear Mr. Zeman:

We have been advised by our labor counsel that there continues to be no legal basis for the information which Local 1645 is seeking to obtain regarding Company facilities at which it is not the certified collective bargaining representative. You are, we hope, aware of the fact that the National Labor Relations Board recently dismissed charges against the Company involving the lack of standing of your client, Local 1645, at other Torrington Company plants.

We are also informed that a review of the cases cited in your letter of August 5th do not reveal any holding by either the Labor Board or the Courts that an employer is obligated to furnish information under the circumstances existing here. Accordingly, your request is denied.

Yours very truly,

William G. Milligan  
Manager, Labor Relations

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

*INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.*

DO NOT WRITE IN THIS SPACE

Case No.—1-CA-10,137

Date Filed—October 3, 1974

1. EMPLOYER AGAINST WHOM  
CHARGE IS BROUGHT

- a. Name of Employer—Torrington Company, Standard Plant, Et Al
- b. Number of Workers Employed—1800
- c. Address of Establishment (Street and number, city, State, and ZIP code) Industrial Relations Div., 59 Field St., Torrington, Conn. 06790
- d. Employer Representative to Contact—Joseph J. Palker, Director of Industrial Relations
- e. Phone No.—203-482-9511
- f. Type of Establishment (Factory, mine, wholesaler, etc.)—Factory
- g. Identify Principal Product or Service—Anti-Friction Bearings & Specialty Products
- h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair

labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Bases of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

By letter dated September 23, 1974, the Company refused to furnish information requested by the Union with reference to its Standard Plant operations located in Waterbury, Thomaston, Bantam and Morris, Connecticut.

The information requested was for the purpose of enabling the Union to police and administer intelligently its current collective bargaining agreement with the Company including, but not limited to, Article XV, Section 15.2 of the current Standard Plant agreement.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charges (If labor organization, give full name, including local name and number)—Local 1645, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW
- 4a. Address (Street and number, city, State, and ZIP code)—100 Prospect Street, Torrington, Connecticut 06790
- 4b. Telephone No.—203-489-7983
5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)—International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ William S. Zeman  
Counsel  
18 North Main Street  
West Hartford, Conn. 06107  
203-521-4430  
Oct. 1, 1974

Willfully False Statements on this Charge Can  
Be Punished by Fine and Imprisonment (U.S.  
Code, Title 18, Section 1001)

[SEAL]

THE TORRINGTON COMPANY  
Industrial Relations Division (203) 482-9511  
59 Field Street • Torrington, Connecticut 06790

November 25, 1974

Mr. Angelo Franculli, President  
Local 1645, UAW  
100 Prospect Street  
Torrington, Connecticut 06790

Dear Mr. Franculli:

It appears that you continue to be under a misapprehension as to the relationship between the Standard Plant where your Local is the certified bargaining representative and the operations of The Torrington Company at its Morris, Bantam, Thomaston and Waterbury facilities.

As we have repeatedly told you since the 1968 Swaging Department move, there has been no transfer of operations or interchange of production or maintenance employees between any of these plants and the Standard Plant. The Standard Plant continues to operate as a separate production facility of the Corporation and no operations have been transferred from the Standard Plant to any of the other plants. Likewise, no bargaining unit employees in your Local have been transferred nor, to our knowledge, are there any people who are working both at the Standard Plant and at any of the other plants mentioned above. Finally, the products at each plant continue to be manufactured, as they have in the past, on a separate basis and without any integrated production operations whatsoever.

I also reiterate the fact that Local 1645 has no legal standing at any of our other operations and the Company will continue to decline to accord it any status there.

Yours very truly,

William G. Milligan  
Manager, Labor Relations

cc: J. S. Siegel, Esq.

[SEAL]

NATIONAL LABOR RELATIONS BOARD  
REGION 1  
Bulfinch Building, 15 New Chardon Street  
Boston, Massachusetts 02114

Telephone (617) 223-3300

December 13, 1974

William S. Zeman, Esq.  
18 North Main Street  
West Hartford, Connecticut 06107

Re: TORRINGTON COMPANY, STANDARD PLANT, ET AL  
Case No. 1-CA-10,137

Dear Mr. Zeman:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

It does not appear that further proceedings on the charge are warranted inasmuch as the investigation has disclosed the following: in its letter of June 27, 1974, the Union requested 13 specific items of information (paragraph 14 of this letter is redundant, merely requesting photo copies of the requests numbered 1 through 13).

It was found that items numbered 1, 2, 3, 6, 7, 8, 11, 12 and 13 pertain to matters as to which the Employer is under no duty to furnish information since they are not relevant to the bargaining unit at the Torrington Standard Plant for which alone the Union is the bargaining agent.

Items 4, 5, 9 and 10 deal with requests for information as to transfer of work and/or personnel between the Torrington Plant and certain other plants. Investigation of Case No. 1-CA-9811 has explored these matters and

it was found that no such transfers or interchanges have taken place and this charge was subsequently withdrawn. In its letter of November 25, 1974, to the Union, the Employer has reiterated this position and no new evidence to rebut it has been offered in the instant case.

In view of the above, I refuse to issue Complaint herein.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel, addressed to the Office of Appeals, National Labor Relations Board, Washington, D.C., 20570 and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D.C., by the close of business on December 26, 1974. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. Any request for extension of time must be submitted to the Office of Appeals in Washington, and a copy of any such request should be submitted to me.

If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal with the Regional Director within the time stated above.

Very truly yours,

/s/ Robert S. Fuchs  
Robert S. Fuchs  
Regional Director

[SEAL]

NATIONAL LABOR RELATIONS BOARD  
OFFICE OF THE GENERAL COUNSEL  
Washington, D.C. 20570

March 3, 1975

Re: Torrington Company  
Standard Plant, *et al.*  
Case No. 1-CA-10,137

William S. Zeman, Esquire  
Zeman, Daley & Silvester  
18 North Main Street  
West Hartford, Connecticut 06107

Dear Mr. Zeman:

Due consideration has been given to your appeal from the Regional Director's refusal to issue complaint based on an 8(a)(1) and (5) charge filed by Local 1298, U.A.W., on October 3, 1974, alleging in substance that the Employer refused to furnish certain information requested by the Union as to its operations located in Waterbury, Thomaston, Bantam and Morris, Connecticut, which information is needed to enable the Union to police and administer its collective bargaining agreement covering the Standard plant of the Employer.

The appeal is denied in part and sustained in part. The appeal is denied as to allegations addressed to the Employer's refusal to provide the information requested in Items #2, 11, 12 and 13 of the Union's June 27, 1974 letter to the Employer. Relevance of that information to the Union's representative status and/or to the policing of its contract has not been established. The appeal is also denied as to Item #14 for the reasons stated in the Regional Director's letter of December 13, 1974.

However, the Employer's refusal to furnish information respecting the remainder of the Union's request presented issues warranting Board determination on the basis of record testimony.

Accordingly, the case was remanded to the Regional Director for issuance of an appropriate 8(a)(1) and (5) complaint, absent settlement.

All further inquiries should be addressed to the Regional Director.

Very truly yours,

Peter G. Nash  
General Counsel

By /s/ Robert E. Allen  
Robert E. Allen  
Director, Office of Appeals

cc: (see next page)

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
FIRST REGION

Case No. 1-CA-10,137

In the Matter of

THE TORRINGTON COMPANY, STANDARD PLANT  
and

LOCAL 1645, INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF  
AMERICA

COMPLAINT AND NOTICE OF HEARING

It having been charged by Local 1645, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, 100 Prospect Street, Torrington, Connecticut 06790 (herein called the Union) that the Torrington Company, Standard Plant, 59 Field Street, Torrington, Connecticut 06790 (herein called Respondent) has been engaging in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.* (herein called the Act) the General Counsel of the National Board (herein called the Board), on behalf of the Board, by the undersigned Regional Director, issues this Complaint and Notice of Hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended.

1. The Charge in this proceeding was filed by the Union on October 3, 1974 and a copy thereof served upon Respondent on October 3, 1974.

2. Respondent is and has been at all times material a corporation duly organized under and existing by virtue of the laws of the State of Connecticut.

3. At all times herein mentioned, Respondent has maintained its principal office and place of business at 59 Field Street, in the City of Torrington, and State of Connecticut (herein called the plant), and is now and continuously has been engaged at said plant in the manufacture, sale and distribution of anti-friction bearings and specialty products.

4. (a) Respondent in the course and conduct of its business causes, and continuously has caused at all times herein mentioned, large quantities of metal used by it in the manufacture of anti-friction bearings and specialty products to be purchased and transported in interstate commerce from and through various States of the United States other than the State of Connecticut, and causes, and continuously has caused at all times herein mentioned, substantial quantities of anti-friction bearings and specialty products to be sold and transported from said plant in interstate commerce to States of the United States other than the State of Connecticut.

(b) Respondent annually receives directly from points outside the State of Connecticut goods and materials valued in excess of \$50,000.

(c) Respondent annually ships directly to points outside the State of Connecticut goods and materials valued in excess of \$50,000.

5. The aforesaid Respondent is and has been engaged in commerce within the meaning of the Act.

6. The Union is a labor organization within the meaning of Section 2(5) of the Act.

7. At all times material herein, the following named person occupied the position set opposite his name, and

has been and is now an agent of the Respondent, acting on its behalf, and is a supervisor within the meaning of Section 2(11) of the Act.

William Milligan—Manager of Industrial Relations

8. All production and maintenance employees of Respondent employed at its Standard Plant, exclusive of office clerical, and salaried employees, time-keepers, firemen, engineers, gatemen, watchmen, guards, executives, foremen, assistant foremen and sub foremen and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

9. At all times material the Union has been the representative for the purposes of collective bargaining of a majority of the employees in the said unit and, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all the employees in the said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

10. On or about June 27, 1974, by letter the Union requested certain information from the Respondent all necessary and relevant in order to administer and police its current collective bargaining agreement with the Respondent to wit:

"1. The date that each of the above operations was acquired;

"2. The method of acquisition and the party from whom each operation was acquired;

"3. The reason that each operation was acquired;

"4. The date or dates that operations from the Standard Plant, if any, were transferred to each of the above operations with a full description of each

such operation including, but not limited to, the volume of work involved;

"5. The same information as requested in paragraph 4 herein above with respect to any transfer of bargaining unit employees in connection with transfer of operations including, but not limited to, names of such employees;

"6. The number of employees working at the Waterbury, Thomaston, Bantam and Morris operations at the time of acquisition and at the present time;

"7. The volume of production of each product being manufactured at the Waterbury, Thomaston, Bantam and Morris operations at the time of acquisition and at the present time;

"8. The products being manufactured at the Waterbury, Thomaston, Bantam and Morris operations at the time of acquisition and at the present time;

"9. The names of any bargaining unit employees who perform work both at the Standard Plant in Torrington and at any of the aforesaid four operations;

"10. The name, description and volume of each product, if any, which is partially processed at the Standard Plant in Torrington and also is partially processed at one or more of the four aforesaid operations including, but not limited to, a description of each such partial process;

"11. A complete description of the wage scale paid to all hourly rated employees at Waterbury, Thomaston, Bantam and Morris;

"12. A complete description of any and all fringe economic benefits, if any, available to hourly rated employees at Waterbury, Thomaston, Bantam and Morris;

"13. A complete description of any and all non-economic benefits available to hourly rated employees at Waterbury, Thomaston, Bantam and Morris including, but not limited to, seniority benefits; and

"14. Photocopies of any and all company records wherein the information requested in paragraph 1 through 13 hereinabove is contained."

11. On or about September 23, 1974 and at all times thereafter, Respondent did refuse and continues to refuse to bargain collectively with the Union as the exclusive representative of all the employees in the unit described above in Paragraph 8 in that Respondent has refused to provide the information requested in Items 1, 3, 4, 5, 6, 7, 8, 9 and 10 contained the June 27, 1974 letter referred to above in Paragraph 10.

12. By the acts described above in Paragraph 11, Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8(a) (5) of the Act.

13. By the acts described above in Paragraph 11, and by each of said acts, Respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

14. The activities of Respondent, described above in Paragraph 11, occurring in connection with the operations of Respondent, described above in Paragraphs 3 and 4 have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

15. The acts of Respondent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a) (1) and (5), and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 24th day of June, 1975 at 10 o'clock in the forenoon, Eastern Daylight Saving Time, at a place to be determined a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of its Answer, Respondent shall serve a copy thereof on each of the other parties.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director, for the First Region, on this 30th day of April, 1975, issues this Complaint and Notice of Hear-

ing against The Torrington Company, Standard Plant,  
Respondent herein.

/s/ Robert S. Fuchs  
Robert S. Fuchs, Regional Director  
National Labor Relations Board  
First Region  
Boston, Massachusetts

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
FIRST REGION

Case No. 1-CA-10,137

In the Matter of

THE TORRINGTON COMPANY, STANDARD PLANT  
and

LOCAL 1645, INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF  
AMERICA

RESPONDENT'S ANSWER TO COMPLAINT

Pursuant to Section 102.20 of the Board's Rules and Regulations, the undersigned Attorney for the Respondent, The Torrington Company, Standard Plant, answers the Complaint duly served as follows:

1. The Respondent admits all of the allegations contained in paragraphs 1, 2, 3, 4a-c inclusive, 5, 6, 7 and 9 of the Complaint.
2. The Respondent for the purposes of this case does not deny paragraph 8 of the Complaint.
3. The Respondent denies the allegations of paragraphs 10, 11, 12, 13, 14 and 15.

4. The Respondent denies that it has engaged in any conduct in violation of the National Labor Relations Act, as amended.

THE TORRINGTON COMPANY

By /s/

Jay S. Siegel  
SIEGEL, O'CONNOR AND KAINEN  
Its Attorneys  
60 Washington Street  
Hartford, CT 06106

Hartford, Connecticut

May 7, 1975

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
WASHINGTON, D.C.

Case No. 1-CA-10,137

THE TORRINGTON COMPANY, STANDARD PLANT  
and

LOCAL 1645, INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF  
AMERICA

*Thomas J. Flynn, Esq.*, Counsel for the General Counsel.

*William S. Zeman, Esq.*, West Hartford, Conn., for the  
Charging Party (Union).

*Jay S. Siegel, Esq. (Siegel, O'Connor & Kainen)*, Hart-  
ford, Connecticut, for the Respondent (Employer).

DECISION

Statement of the Case

JERRY B. STONE, Administrative Law Judge: This proceeding, under Section 10(b) of the National Labor Relations Act, as amended, was tried pursuant to due notice on June 24 and 25, 1975, at Hartford, Connecticut.

The charge was filed on October 3, 1974. The complaint in this matter was issued on April 30, 1975. The issues concern whether the Respondent has refused to bargain with the Union (by refusing to furnish necessary and relevant information, when requested, for the Union's

use in policing and administering the existing collective bargaining agreement between the Union and the Respondent), and thereby has violated Section 8(a)(5) and (1) of the Act.

All parties were afforded full opportunity to participate in the proceeding. Briefs have been filed by the General Counsel, the Charging Party, and the Respondent and have been considered.

Upon the entire record in the case and from my observation of witnesses, I hereby make the following:

### Findings of Fact

#### I. The Business of the Employer<sup>1</sup>

The Torrington Company, Standard Plant, the Respondent, is, and has been at all times material herein, a corporation duly organized under and existing by virtue of the laws of the State of Connecticut. At all times herein mentioned, Respondent has maintained its principal office and place of business at 59 Field Street, in the City of Torrington, and State of Connecticut (herein sometimes called the plant), and is now and continuously has been engaged at said plant in the manufacture, sale, and distribution of anti-friction bearings and specialty products.

Respondent, in the course and conduct of its business, causes, and continuously has caused at all times herein mentioned, large quantities of metal used by it in the manufacture of anti-friction bearings and specialty products to be purchased and transported in interstate commerce from and through various States other than the State of Connecticut, and causes, and continuously has caused at all times herein mentioned, substantial quantities of anti-friction bearings and specialty products to

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<sup>1</sup> The facts herein are based upon the pleadings and admissions therein.

be sold and transported from said plant in interstate commerce to States of the United States other than the State of Connecticut. Respondent annually receives directly from points outside the State of Connecticut goods and materials valued in excess of \$50,000. Respondent also annually ships directly to points outside the State of Connecticut goods and materials valued in excess of \$50,000.

As conceded by Respondent and based upon the foregoing, it is concluded and found that the Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

## II. The Labor Organization Involved<sup>2</sup>

Local 1645, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

## III. The Unfair Labor Practices

### (a) *Preliminary Issues* *Supervisory Status*<sup>3</sup>

At all times material herein, the following named person occupied the position set opposite his name, and has been and is now an agent of the Respondent, acting on its behalf, and is a supervisor within the meaning of Section 2(11) of the Act.

William Milligan—Manager of Industrial Relations

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<sup>2</sup> The facts are based upon the pleadings and admissions therein.

<sup>3</sup> The facts are based upon the pleadings and admissions therein.

(b) *The Bargaining Unit*  
*Exclusive Representative Status*<sup>4</sup>

1. All production and maintenance employees of Respondent employed at its Standard Plant, exclusive of office, clerical, and salaried employees, time-keepers, firemen, engineers, gatemen, watchmen, guards, executives, foremen, assistant foremen and subforemen and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

2. At all times material herein, the Union has been the representative for the purposes of collective bargaining of a majority of the employees in the said unit and, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all the employees in the said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

C. *The Collective-Bargaining Agreement*

The current collective-bargaining agreement between the Union and the Respondent has been in effect since May 11, 1973, and is to be in effect until May 14, 1976.

Excerpted from such agreement are those articles and provisions having a bearing on the issues in this case. Such excerpts are as follows:

\* \* \* \*

ARTICLE I

Recognition

The Company agrees to recognize the above designated Union as the sole and exclusive representative

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<sup>4</sup> The facts are based upon the pleadings and admissions therein, or upon uncontroverted pleading which may be deemed to be true and are so deemed.

of all production and maintenance employees in the Standard Plant of the Company, for the purpose of collective-bargaining in respect to rates of pay, hours of work, and other conditions of employment, provided that such representation shall not include office, clerical and salaried employees, time keepers, firemen, engineers, gatemen, watchmen, guards, executives, foremen, assistant foremen and subforemen: provided, that any individual employee shall have the right to present his own grievance under the procedure set forth in the National Labor Relations Act.

\* \* \* \*

### ARTICLE III

#### Checkoff

##### Section 3.1

The Company agrees to deduct monthly dues from wages and remit the same to the Executive Secretary of the Union.

\* \* \* \*

### ARTICLE XIV

#### Management Rights

##### Section 14.1

The management of the Company shall have the exclusive rights to determine from time to time the places and products (in Torrington or elsewhere) of manufacture, to subcontract and to establish the methods and processes of manufacture. The Company's right to establish methods and processes of manufacture shall not derogate or diminish any rights of employees otherwise specifically provided by this Agreement.

### Section 14.3

In the event that the Company subcontracts work normally done by bargaining unit employees who are on a work schedule of less than forty-five (45) hours per week, the question of whether or not the Company's decision to so subcontract was based on good and sufficient economic reasons will be subject to the grievance and arbitration procedure.

If the Union alleges in arbitration that a subcontract was improperly undertaken where the employees who are directly affected were on a schedule of less than forty-five (45) hours, and the arbitrator finds that the Company lacked good and sufficient economic reasons for the subcontract, the arbitrator may make an award that appropriately adjusts any such directly affected employee for any hours worked under forty-five (45) hours a week.

No subcontract shall be entered into which in and of itself causes a reduction of hours below forty-five (45) hours a week or loss of jobs.

Notwithstanding the arbitrator's decision under paragraphs 1, 2, or 3 above, the arbitrator may also rule whether the effects of the subcontracting deprives an employee of his rights under provisions of this Agreement, and provide an appropriate remedy.

### Section 14.4

An up-to-date list of all bargaining unit work subcontracted will be given to the Shop Chairman on or about the first of each month. This list will be compiled by plants.

\* \* \* \*

## ARTICLE XV

## Relocation and Subcontracting

## Section 15.1

In the event that any subcontract let to any independent contractor directly results in the elimination of any bargaining unit job, any employee affected thereby, either directly or by displacement by a senior employee, shall have the option of:

- (a) Accepting a transfer to another job or bumping into another job in accordance with the seniority provisions hereof; or
- (b) If he has at least seven and one-half ( $7\frac{1}{2}$ ) years of continuous company service, receiving forty (40) hours pay at his average hourly earnings for each year of continuous company service, in lieu of continuing his recall rights under the contract.

## Section 15.2

If the Company transfers any operations from one of its existing plants in Torrington to another of its present plants in Torrington, or to a plant hereafter constructed or acquired by the Company within a radius of seventy-five (75) land miles from the center of the City of Torrington, the employees involved shall follow their jobs without loss of seniority or continuous Company service. In any such plant hereafter constructed or acquired within the above radius of seventy-five (75) land miles, the Company agrees to recognize Local 1645 as the bargaining representative for such employees, if it is not illegal to do so.

#### Section 15.4

The Company will give the Union and the Shop Chairman advance written notice of any transfer of operations or operating equipment under Section 15.2 and 15.3 of this Article.

#### Section 15.5

The same payment as that described in Section 15.1(b) above will be made to any employee who is terminated by the Company because of a shutdown or permanent abandonment of any operations in the Torrington area, if he does not exercise his transfer or bumping rights under Section 15.1(a) above. It is understood, however, that this section shall not apply to ordinary layoffs due to lack of orders.

#### Section 15.6

This Article shall apply only to subcontracts let or to transfer of equipment or to jobs involved in Section 15.5 made after September 27, 1963.

#### Section 15.7

Any dispute as to the application of this Article shall be subject to the grievance procedure and to arbitration, but not the Company's decision to subcontract work or to transfer operations or equipment.

\* \* \* \*

### D. *Background Events*

#### *Article XV (Sec. 15.2)*

Since early 1964, the parties have had in their collective-bargaining agreements a clause as set forth in Article XV (Section 15.2) above. This clause in effect affords certain rights to employees relating to transfer of operations within a radius of 75 miles from the Stand-

ard Plant to one of the Respondent's existing plants or to a plant constructed or acquired by the company after early 1964. This clause also affords certain recognitional rights, if lawful, at such constructed or acquired plants.

*Acquisition of Certain Plants*

*Thomaston, Bantam, Morris and Waterbury*

After early 1964 and apparently around 1967 or 1968, the Respondent acquired the Thomaston Special Tool and Manufacturing Company. The acquisition included facilities located at three (3) separate locations—Thomaston, Morris, and Bantam, Connecticut, which are located 25-35 miles from Torrington, Connecticut. In May 1968 the Respondent acquired the Vaill Company located in Waterbury, Connecticut, about 30 miles from Torrington, Connecticut. As has been indicated, the Torrington Company's Standard Plant is located in Torrington, Connecticut. The employees at the Standard Plant constitute the basic contractual bargaining unit involved herein.<sup>5</sup> The Thomaston plants, referred to above, are respectively known as Respondent's Thomaston, Morris, and Bantam plants. The Vaill facility, referred to above, is now known as Respondent's Waterbury Plant. The Thomaston, Morris, Bantam, and Waterbury plants all constitute plants acquired after early 1964, the time that Article XV (Section 15.2) came into being, and are within a 75 mile radius of Torrington, Connecticut. The issues in this case concern the application of Article XV (Section 15.2) with respect to the Standard Plant and the operations at Respondent's Thomaston, Morris, Bantam, and Waterbury plants.

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<sup>5</sup> The facts indicate that employees at Respondent's Excelsior Plant, Broad Street Plant, and Wire Plant, all located in Torrington, Connecticut, are deemed covered by the existing collective-bargaining contract with the Union referred to in Section C. As noted later, the Bonnie Mills facility is also deemed within such contractual unit and covered by such contract.

*Transfer of Operations  
Waterbury and Bonnie Mills*

The facts are undisputed that the Respondent has transferred operations on two occasions, since early 1964, to existing or acquired facilities within a radius of 75 miles of the Standard Plant.

Thus, in 1968, the Respondent removed its entire swaging operation from its Standard Plant at Torrington, Connecticut, to one of the plants acquired from the Vaill Company, called the Waterbury Plant, at Waterbury, Connecticut, located 26 miles from the Standard Plant.

The facts are not disputed and reveal that at such time the Standard Plant had around 1200 employees, that 22 employees were engaged in the swaging operations and were afforded the opportunity to transfer from the Standard Plant bargaining unit to the Vaill (Waterbury) operation, that 5 of such bargaining unit employees elected to so transfer.<sup>6</sup>

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<sup>6</sup> The Union filed a petition for clarification of the bargaining unit at the Standard Plant and sought to have the unit of production employees at the Vaill (Waterbury) plant included in such bargaining unit. The Union essentially sought inclusion of such employees at the Vaill Plant in the Standard Plant bargaining unit on the basis of Article XV, Section 15.2. The Regional Director, noting that such article included the terminology, "if it is not illegal to do so," reviewed the facts, found in effect the extent of the removal of an operation of 22 employees out of 1200 employees, and the resultant transfer of 5 employees into a unit of 31 employees to be insubstantial. The Regional Director found in effect that there was not an accretion to the Standard Plant bargaining unit and that the petition for clarification of the bargaining unit raised a question concerning representation which may not be resolved through a clarification of an existing unit. The Regional Director, on August 1, 1969, dismissed the Union's petition for clarification of the Standard bargaining unit.

In early 1974, the Respondent transferred an operation involving the assembly and manufacture of rear wheel ball bearings from its Standard Plant to a Bonnie Mills facility, located in Torrington, Connecticut, and within the contractual 75 miles radius. It is clear that the Respondent notified the Union of such transfer, afforded employees rights under Article XV, Section 15.2, and considered the employees at Bonnie Mills to be part of the Standard Plant bargaining unit and covered by the collective-bargaining agreement with the Union. The facts reveal that the nature of the transfer revealed no question concerning representation.

*Representation Question*

*Thomaston, Bantam, Morris and Waterbury Plants*

As indicated, the Regional Director, in Case 1-UC-55, dismissed the Union's unit clarification petition, relating to certain of the Waterbury plant employees, on August 1, 1969. Thereafter, a question concerning representation as to certain of the Waterbury plant employees arose in 1970.

On August 12, 1970, a representation election was held among certain employees of the Respondent's Waterbury operation. Teamsters Local Union No. 677, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America was the only union involved in the proceeding. The exact bargaining unit involved is not revealed by the evidence. However, the evidence that such plant had 31 production unit employees at the time of the determination of the Local 1645 UAW's petition for clarification, indicates the probability that the unit involved was a production unit and not a limited drivers' unit.<sup>7</sup> Local 1645, UAW, revealed no interest in such employees at that time, was aware of such election while

<sup>7</sup> If the unit involved were a limited drivers' unit, such would not affect the results of the decision herein.

pending and did not intervene therein. The Teamsters lost the August 12, 1970, representation election.

The parties are in agreement that, excepting for the representation petition involved in the August 12, 1970, Waterbury election, no representation petition has been filed respecting the Thomaston, Bantam, Morris and Waterbury plants of the Respondent. It is also clear that there has been no definitive certification concerning representation rights, nor does the Respondent recognize any union concerning the employees in such plants.

*Demand for Recognition*

*Re: Thomaston, Bantam, Morris and Waterbury  
Events of April 3, 1974*

On April 3, 1974, Angelo Franculli, President of Local 1645 transmitted a letter to Joseph J. Palker, Director of Labor Relations of the Torrington Company, to the following effect.

. . . .

April 3, 1974

Mr. Joseph J. Palker  
Director of Labor Relations  
The Torrington Company  
59 Field Street  
Torrington, Connecticut 06790

Re: Standard Plant  
Torrington, Connecticut

Dear Mr. Palker:

In accordance with the Company's request, this letter is written to you in order to set forth the position of Local 1645 with respect to the Torrington Company's operations at Waterbury, Thomaston, Bantam and Morris, Connecticut.

All of these operations are within a radius of seventy-five (75) land miles from the center of the City of Torrington and were acquired at various time by the Torrington Company. The operation of Waterbury was acquired from Vaill and the the other operations were acquired from Thomaston Special Products, Inc.

At the present time all of these operations are functionally inter-related with the Standard Plant in Torrington both with respect to manpower and products.

It is the position of Local 1645 that the aforesaid operations come within the scope of the current Standard Plant Contract pursuant to Article 1 and Article 15, Section 15.2 and 15.3.

Would you please let us know, within two weeks, whether or not the Company agrees with the contents of this letter or if you wish to arrange a conference to discuss same.

Very truly yours,

Angelo Franculli,  
President.

\* \* \* \*

*Events of April 19, 1974*

On April 19, 1974, William G. Milligan, Manager, Labor Relations, for the Respondent, responded by letter to President Franculli of the Union.

The following reveals Milligan's reply.

\* \* \* \*

April 19, 1974

Mr. Angelo Franculli, President  
Local 1645, UAW  
100 Prospect Street  
Torrington, Connecticut

Dear Mr. Franculli:

In response to your letter to Mr. Palker of April 3, 1974, please be advised that the Company does not believe Local 1645 has any legal or contractual basis for the position outlined therein at any of the plants listed.

You will recall, no doubt, that your general position was rejected by the National Labor Relations Board in 1969 at the Waterbury plant.

Nothing has happened basically to change that situation for our plant at Waterbury as well as Thomaston, Morris and Bantam. Contrary to the assertion in your letter, their operations are not functionally interrelated to operations at Torrington but are separate physically, functionally and administratively.

Accordingly, we see no purpose in a conference with you on this matter.

Yours very truly,

William G. Milligan  
Manager, Labor Relations

\* \* \* \*

*Refusal to Bargain Charge  
Events of May 9, 1974, et seq.*

The Union, thereafter on May 9, 1974, filed an unfair labor practice charge against the Respondent in Case

No. 1-CA-9811. The Union in effect alleged that the Respondent was violating Section 8(a)(5) and (1) of the Act. Specifically, the Union alleged that:

The Company is refusing to bargain with the Union with reference to its Standard Plant Operations located in Waterbury, Thomaston, Bantam and Morris, Connecticut.

The above plants are covered by the current collective-bargaining agreement.

\* \* \* \*

Later the Union, on the understanding that the Region did not consider that there was sufficient evidence to issue a complaint, notified the Region that it wished to withdraw the charge without prejudice.\*

The Regional Director for Region 1 approved said withdrawal request on June 17, 1974, and on June 18, 1974, notified the parties of the approval of the withdrawal of the charge without prejudice.

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\* It should further be noted that Franculli, president of the Union, first testified to the effect that he had furnished all of the information that he had to the Regional office in connection with its investigation of the unfair labor practice charges in Case 1-CA-9811. However, Franculli qualified such testimony by stating that he didn't know whether he had given the Regional office all of the information that the Union had at such time, that it was possible that some information had been held back, that there had been other potential witnesses, and that the Union had presented the available witnesses for interview by Regional Office personnel. Franculli, however, testified to the effect that such witnesses, not presented, essentially had the same information as the witnesses presented, that the information concerned "work going to Waterbury and their other plants." Although Franculli's testimony refers to having had other potential witnesses, I am persuaded that if the Union had thought that such potential evidence was significant enough to persuade the Region of merit to the charges, the Union would have proceeded to present such evidence.

*Other Background Facts*  
*Pre-June 27, 1974*

As set forth later herein, the Union, by letter dated June 27, 1974, requested that the Respondent supply it certain information so that it could carry out its dues with respect to policing the contract as to Articles I, III, and XV (Section 15.2). In addition to the background evidence previously set forth, testimony was presented with respect to whether events had occurred warranting the need for such information and to the relevance of the information requested as to such referred to contract sections.

Such additional background evidence is herein summarized.

1. Franculli credibly testified to the effect that in his role as Union president, he received information regarding transfers of work and or people in the plant.<sup>9</sup>

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<sup>9</sup> As to a question relating to specific information received as to such transfers of work and/or people in the plant, an objection was made to testimony of a hearsay nature. The dialogue of the General Counsel and the context of the record indicated the General Counsel's purpose to establish the Union's belief that the Respondent's November 25, 1974, reply was not properly responsive. Under such circumstances, it was indicated to the General Counsel to proceed without hearsay testimony. However, as the questioning and testimony proceeded, testimony of hearsay nature, without objection, was introduced into the record. The General Counsel, however, did not protect his record otherwise by an offer of proof. It is noted that the witness was a witness for the General Counsel. The charging party's counsel, in argument, presented a basis for receipt of the evidence into the record which was different from the purpose tendered by the General Counsel. However, the charging party did not question the witness along the lines of the basis of his contended relevance. Again, a similar problem arose with the consideration of an improper document concerning a Chrysler Sprague rod operation. Objection to hearsay testimony concerning an operation sheet was sustained. It was indicated, however, that the witness, who allegedly had copied a company document, could testify to the terms of the document and refresh his recollection thereto from his notes. The witness, however, was not questioned along this line.

For the past few years, at Respondent's Standard Plant, an employee (the steel cut off man in the machine room) has on a fairly continuous basis, cut off steel designated for use at the Waterbury plant.<sup>10</sup> There is a sign located nearby where the steel, as cut off, is stacked. This sign indicates that the steel is for the Waterbury plant. Further, after such steel has been cut off and designated for Waterbury, blue prints are forwarded with such steel to the Waterbury plant. An employee from Waterbury, almost every week, picks up the cut off steel and blue prints for apparent transportation to the Waterbury plant.<sup>11</sup>

Franculli, president of the Union, on a number of occasions during the past few years, spoke to Plant Superintendent Caputi and Industrial Relations Manager Milligan about the steel being cut off and shipped to the Waterbury plant. It appears that Franculli's complaint was that this work was being subcontracted.<sup>12</sup> Both Caputi and Milligan indicated to Franculli that they did not consider such work to be subcontracted work.

Milligan credibly testified to the effect that the work involved was "Waterbury" work, that he did not consider the "cutting off" of steel on such work to constitute an integrated production process but that it was a service performed by Standard for Waterbury. The fact that Milligan considered such work to be a service is not determinative as to whether such work should be considered service or an integrated process.

2. David Hughes is an employee who works in the research department of the Standard Plant. During the period of time of 1973-74, Hughes, on approximately 16

<sup>10</sup> Steel is also cut off for use at other plants.

<sup>11</sup> The facts are based upon Franculli's credited testimony.

<sup>12</sup> It is noted that the collective-bargaining agreement contains clauses relating to subcontracting and the rights of employees concerning certain specified hours of work, and arbitration and grievance procedures thereto.

occasions for about a day at a time, or perhaps several days at the same time, went to the Waterbury plant to work. On some of the occasions Hughes was accompanied by John Dubiel, an engineer in the Standard Plant research department. It is not clear from the record whether Dubiel went to the Waterbury plant on other occasions.

*Miscellaneous after June 27, 1974*

In addition to the background facts previously alluded to, there was testimony or evidence relating to other work performed at the Standard Plant or the Thomaston, Bantam, Morris or Waterbury plants. Such facts may be summarized as follows:

1. In October or November 1974, Anthony Stolfi, a set up man from the Standard Plant Swaging Department went to the Waterbury plant to set up certain work. On such occasion, Stolfi was accompanied by a foreman, Walter Schroeder.
2. In December of 1974 or January of 1975, Standard Plant employee Perdetto took tools from the Standard Plant Swaging Department to Waterbury, Franculli, president of the Union, spoke to Industrial Relations Manager Milligan about this incident. Milligan told Franculli that he would check into the matter. Later, Milligan told Franculli that Perdetto had taken the tools to Waterbury to do some experimental work on the swaging of some parts, that the tools were needed for such reason.
3. Joseph Alibozak is a Standard Plant employee who works on the "Blanchard" grinder in the machine room. Around the last of May or first of June, 1975, Alibozak told Union President Franculli that there had been some work already at his machine for him to work on, that such work was being taken to the Waterbury plant. Franculli and Alibozak spoke to Plant Superintendent Caputi

about this matter. Caputi told Franculli that he didn't know much about the matter, that he would get back to him later. Several days later Franculli approached Caputi again on the same matter. At this time Caputi told Franculli that the Respondent had, at such time, sent work to Waterbury, that the Respondent had wanted to get the work done in a hurry.

Franculli asked Caputi if he could tell him how much work was done and the type of work done. Plant Superintendent Caputi told Franculli that he would check and try to get the information. Later on June 20, 1975, Franculli asked Caputi about the information requested. Apparently Caputi told Franculli at such time that he still did not have such information.

4. At some point of time, not revealed by the record, Union president Franculli investigated a question as to whether work on a "Chrysler Sprague rod job" was being performed at a plant other than the Standard Plant. It appears that the Chrysler Sprague rod job was developed at the Standard Plant and that there had been continued work on such job at the Standard Plant. The details as to whether other plants performed work on the Chrysler Sprague rod job are not revealed in the record.

5. Cisowski credibly testified to the effect that she was a press operator in the Standard Plant, that in October or December, 1974, she worked on a sample of 100 pieces of a particular type precision bearing, that this was not a bearing that was in production at that time, that at such time her supervisor told her in effect that the employees would have to commence assembling this type bearing in April, 1975. Cisowski further credibly testified to the effect that such production did not thereafter commence at Standard Plant on such bearing, that, however, on April 2, 1975, she noticed a component part of such bearing while at work, that she picked up an operation sheet related to such bearing and noticed that

the bearing was destined for a vendor, the Thomaston Speciality Products Company. Cisowski also credibly testified to the effect that she later asked her forelady about such precision bearing and was told, "It doesn't look good."

*Miscellaneous Otherwise*<sup>13</sup>

1. At times some orders from customers are produced partly at the Standard Plant and partly at either the Waterbury, Bantam, Morris or Thomaston plants.

2. One cannot determine from Respondent's records whether a Standard Plant employee has worked at times at the Waterbury, Bantam, Morris or Thomaston plants unless such employee has been transferred on the payroll records.

*E. Events of June 27, 1974*

On June 27, 1974, President Franculli, for the Union, transmitted a letter to the Respondent as is revealed by the following:

\* \* \* \*

June 27, 1974

Mr. Joseph J. Palker  
Director of Labor Relations  
The Torrington Company  
59 Field Street  
Torrington, Connecticut 06790

Dear Mr. Palker:

With reference to our letter to you of April 3, 1974 concerning the Torrington Company's operations at Waterbury Thomaston, Bantam and Morris, Connecticut, please be advised that the Union hereby requests the information set forth hereinbelow in order to police and administer intelligently Article

<sup>13</sup> The facts are based upon a composite of Milligan's and Harwood's credited testimony.

I, Article II and Article XV, Section 15.2 of our Standard Plant contract since all of the aforesaid operations are within a radius of seventy-five (75) land miles from the center of the City of Torrington:

1. The date that each of the above operations was acquired;
2. The method of acquisition and the party from whom each operation was acquired;
3. The reason that each operation was acquired;
4. The date or dates that operations from the Standard Plant, if any, were transferred to each of the above operations with a full description of each operation including, but not limited to, the volume of work involved;
5. The same information as requested in paragraph 4 hereinabove with respect to any transfer of bargaining unit employees in connection with transfer of operations including, but not limited to, names of such employees;
6. The number of employees working at the Waterbury, Thomaston, Bantam and Morris operations at the time of acquisition and at the present time;
7. The volume of production of each product being manufactured at the Waterbury, Thomaston, Bantam and Morris operations at the time of acquisition and at the present time;
8. The products being manufactured at the Waterbury, Thomaston, Bantam and Morris operations at the time of acquisition and at the present time;

9. The names of any bargaining unit employees who perform work both at the Standard Plant in Torrington and at any of the aforesaid four operations;

10. The name, description and volume of each product, if any, which is partially processed at the Standard Plant in Torrington and also is partially processed at one or more of the four aforesaid operations including, but not limited to, a description of each of such partial process;

11. A complete description of the wage scale paid to all hourly rated employees at Waterbury, Thomaston, Bantam and Morris;

12. A complete description of any and all fringe economic benefits, if any, available to hourly rated employees at Waterbury, Thomaston, Bantam and Morris;

13. A complete description of any and all non-economic benefits available to hourly rated employees at Waterbury, Thomaston, Bantam and Morris including, but not limited to, seniority benefits; and

14. Photocopies of any and all company records wherein the information requested in paragraph 1 through 13 hereinabove is contained.

Very truly yours,

Angelo Franculli,  
President.

\* \* \* \*

*Events of July 9, 1974 and to  
September 23, 1974 and October 3, 1974*

On July 9, 1974, William G. Milligan, Manager, Labor Relations, for the Respondent, replied by letter to President Franculli as is revealed by the following,

\* \* \* \*

July 9, 1974

Mr. Angelo Franculli, President  
Local 1645, UAW  
100 Prospect Street  
Torrington, Connecticut

Dear Mr. Franculli:

Your recent letter of June 27 addressed to Mr. Pal-ker has been referred to me for reply.

We seriously challenge the legal basis behind your request for information regarding the Company's plants in Thomaston, Bantam, Morris and Waterbury notwithstanding Section 15.2 of the Standard Plant contract.

It continues to be the Company's position that it is under no legal obligation to deal with your Union for these plants. Under the interpretation accorded Section 15.2 by the NLRB Regional Director in Boston in Case Number 1-UC-55, we are not required to deal with your Union for any such plants of the Company within the 75 mile radius of Torrington. This is particularly so in view of your recent withdrawal of unfair labor practice charges alleging a refusal to bargain by the Company with Local 1645 in connection with those plants.

Before we can give serious consideration to your request or any portion thereof, we will require your outlining in detail and with case authorities, the

basis under which you claim a legal right to obtain the data you seek at the plant locations mentioned in you letter.

Yours very truly,

William G. Milligan  
Manager, Labor Relations

\* \* \*

Thereafter, on August 5, 1974, the Union, by its attorney, William S. Zeman, replied to the Respondent's letter of July 9, 1974, Zeman's letter in effect related that the information requested was necessary to police and intelligently administer Article XV, Section 15.2 of the Standard Plant Contract. Zeman's letter also referred to various Board and Court cases in support of his contentions.

On September 23, 1974, the Respondent, by William G. Milligan, replied to Zeman's letter of August 5, 1974, as follows:

\* \* \*

September 23, 1974

William S. Zeman, Esq.  
Zeman, Daley and Silvester  
18 North Main Street  
West Hartford, Connecticut

Dear Mr. Zeman:

We have been advised by our labor counsel that there continues to be no legal basis for the information which Local 1645 is seeking to obtain regarding Company facilities at which it is not the certified collective bargaining representative. You are, we hope, aware of the fact that the National Labor Relations Board recently dismissed charges against the Company involving the lack of standing of your

client, Local 1645, at other Torrington Company plants.

We are also informed that a review of the cases cited in your letter of August 5th do not reveal any holding by either the Labor Board or the Courts that an employer is obligated to furnish information under the circumstances existing here. Accordingly, your request is denied.

Yours very truly,

William G. Milligan  
Manager, Labor Relations

\* \* \* \*

*Events of November 25, 1974*

On November 25, 1974, William G. Milligan, for the Respondent, transmitted another letter to Franculli for the Union. It is clear that this letter is in further reply to the Union's letter of June 27, 1974. It is noted that the unfair labor practice charge in this case had been filed on October 3, 1974. Milligan testified in effect that he transmitted such letter on the belief that it would result in the elimination of the unfair labor practice charges in this case.

The November 25, 1974, letter is as herein set out.

\* \* \* \*

November 25, 1974

Mr. Angelo Franculli, President  
Local 1645, UAW  
100 Prospect Street  
Torrington, Connecticut 06790

Dear Mr. Franculli:

It appears that you continue to be under a misapprehension as to the relationship between the Stand-

ard Plant where your Local is the certified bargaining representative and the operations of The Torrington Company at its Morris, Bantam, Thomaston and Waterbury facilities.

As we have repeatedly told you since the 1968 Swaging Department move, there has been no transfer of operations or interchange of production or maintenance employees between any of these plants and the Standard Plant. The Standard Plant continues to operate as a separate production facility of the Standard Plant to any of the other plants. Likewise, no bargaining unit employees in your Local have been transferred nor, to our knowledge, are there any people who are working both at the Standard Plant and at any other plants mentioned above. Finally, the products at each plant continue to be manufactured, as they have in the past, on a separate basis and without any integrated production operations whatsoever.

I also reiterate the fact that Local 1645 has no legal standing at any of our other operations and the Company will continue to decline to accord it any status there.

Yours very truly,

William G. Milligan  
Manager, Labor Relations

\* \* \* \*

On October 3, 1974, the Union filed the charge in this case (Case No. 1-CA-10137), alleging a refusal to bargain in violation of Section 8(a)(5) and (1) of the Act by refusing to furnish necessary and relevant information for bargaining.<sup>14</sup>

<sup>14</sup> The Respondent, with the filing of its brief on August 15, 1975, offered for receipt into the record, Respondent's Exhibit 5 a copy

*Contentions*  
*Conclusions*

The General Counsel and the Charging Party contend that the Union, by its letter of June 27, 1974, made a proper request for relevant information necessary for the Union to carry out its responsibilities of policing and administering its collective-bargaining agreement with the Respondent. The General Counsel and the union contend that items 1, 3, 4, 5, 6, 7, 8, 9, and 10 (of such June 27, 1974 letter) constitute a request for relevant information in the foregoing context. The Respondent contends in effect that it has furnished such relevant information as required and as to those items not replied to, that such information has not been revealed to be relevant.

The Union's letter of June 27, 1974, reveals that it was with reference to a prior letter of April 3, 1974. In such letter of April 3, 1974, the Union made in effect a demand that the Respondent recognize the Union as the bargaining representative of its employees at Respondent's Waterbury, Thomaston, Bantam, and Morris operations. Such letter further revealed in effect that the Union was contending that the interrelationship of Respondent's Standard Plant and the four other operations (Waterbury, Thomaston, Bantam, and Morris) was of such a nature that the union was entitled to recognition as bargaining agent pursuant to provisions Article 1,

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of the Regional Director's letter of December 13, 1974, relating to a refusal to issue complaint in Case 1-CA-10,137, and Respondent's Exhibit 6, a copy of the General Counsel's letter of March 3, 1975, a partial reversal of the Regional Director's action referred to in the December 13, 1974, letter. No objection has been made to the receipt of such exhibits. Respondent's Exhibits 5 and 6 are received into the record and have been considered. Such exhibits do not constitute probative evidence concerning the issues herein. Nor do they reveal facts relating to policy considerations warranting different findings of fact, conclusions of law, remedial order, or ultimate disposition herein.

and Article 15 (Section 15.2) of the contract. The foregoing being so, it is clear that the union, by its letter of June 27, 1974, advised the Respondent of its continuing contention that it represented employees at Waterbury, Thomaston, Bantam and Morris operations, the reasons for its contentions, and that it wanted the requested information in order to police and administer contract clauses giving it a basis for such recognition rights.

There are several possible bases for recognition rights pursuant to Article XV (Section 15.2) set out above in Section III C. One basis would be recognition rights to be accorded if the Union were the clearly designated bargaining representative of such employees by means other than an accretion or merged unit theory. Another basis would be if the facts revealed that such operations had been integrated with the basic Standard Plant unit so as to constitute one bargaining unit on a merged or accreted unit type theory.<sup>15</sup> I do not find it necessary to determine in this case whether the Union would be entitled to information to pursue recognition rights on a theory other than that of a merged or accreted unit theory.

Considering the type of information requested in items 1, 3, 4, 5, 6, 7, 8, 9, and 10, I am persuaded that such information has a potential relevance in revealing whether or not the interrelationship of the Standard Plant and the four other plants (Waterbury, Thomaston, Bantam, and Morris) as to employment structure, employees, and work product, is of such a nature as to constitute a merging into or accretion of the employees of Waterbury, Thomaston, Bantam and Morris into the basic

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<sup>15</sup> I have considered the fact that in 1969 it was found that the Waterbury employees did not constitute an accretion to the Standard Plant unit. However, I am persuaded that changes could be made that might merge or accrete the Waterbury employees into the Standard Plant unit at a later date.

Standard Plant unit, and the applicability of Article XV (Section 15.2) of the Contract as to bargaining rights on such basis. In my opinion Article XV (Section 15.2) in and of itself reveals a basis for potential relevancy of such information.

Thus, Article XV (Section 15.2) sets forth: "In any such plant thereafter constructed or acquired within the above radius of seventy-five (75) land miles, the Company agrees to recognize Local 1645 as the bargaining representative for such employees, if it is not illegal to do so." Item one of the Union's June 27, 1974, letter requests information as to when the Waterbury, Bantam, Morris, and Thomaston operations were required. It is relevant as to a determination of whether the Union, under certain circumstances could assert that it had a contractual right to be recognized as a collective-bargaining representative for such employees. Items 3, 4, 5, 6, 7, 8, 9, and 10, in such letter, all request information having a potential relevancy to establishment that there had been a merged or accreted unit wherein the Union would have a contractual right to claim that it was the collective-bargaining representative for such employees. Thus, such items relate to transfers of operations, transfers of employees, production, products, community interest, and relationship of production processes. In composite effect, such information might reveal that there had been a merged or accreted unit of such operations and employees. Further, such information might reveal that there had been transfers of operations, directly or indirectly, and that contractual assertion of employee transfer rights might be asserted which would have a bearing on the question of a merged or accreted unit. In sum, the information requested has a potential relevance relating to a possible merged or accreted unit contention by the union.

The background facts relating to the Union's awareness that (1) steel was being cut off at the Standard

Plant for apparent transportation to its Waterbury operation and Respondent's remarks to union officials that such was not subcontracting, and (2) that employee Hughes was being sent from the Standard Plant on occasion to work a day or two at its Waterbury operation, when considered with the size of the Standard Plant employee complement (approximately 1000 or more employees), reveal a basis for legitimate inquiry into the question of interrelationship of the involved plants with respect to the Union's obligation to police and administer the contract provision having a bearing on representation rights as might be warranted in a merged or accreted bargaining unit.

Considering this in connection with the Union's demand for recognition on April 3, 1974, the subsequent unfair labor practice charge relating to bargaining rights as to the four facilities (Waterbury, Bantam, Morris, and Thomaston), and the indication that the N.L.R.B. regional office was not prepared to issue complaint therein because of lack of information, I am persuaded that the facts reveal that the Union had a legitimate need to request such information as set forth in items 1, 3, 4, 5, 6, 7, 8, 9, and 10 in order to intelligently police and administer the contract provisions pertaining to potential recognition rights.

I am also persuaded that the Respondent clearly knew what the Union was asking for in its June 27, 1974, letter, why the Union wanted such information, and that the Union needed such information in order not to be functioning in the dark as an employee collective-bargaining representative. Thus, the Respondent was aware of the Union's contention as to representation rights at Waterbury, Bantam, Morris, and Thomaston, and the Respondent knew the theory that the Union was proceeding on. The Respondent clearly knew all of this by virtue of the April 3, 1974, letter from the Union, and

the unfair labor practice charges in Case 1-CA-9811. With this background, I find it hard to believe, and don't believe that the Respondent did not know what information the Union was seeking and why. I am persuaded that Respondent knew that the Union's June 27, 1974, letter sought information to determine whether the four facilities were merged into the basic Standard Plant unit and for information otherwise having a bearing on possible representation rights.

The facts relating to the Respondent's replies to the Union's letter of June 27, 1974, and subsequent correspondence until November 25, 1974, reveal, in my opinion, that Respondent failed and refused to furnish relevant information pertaining to the Union's request, as to items 1, 3, 4, 5, 6, 7, 8, 9, and 10, after June 27, 1974 and until November 25, 1974. The Respondent by its letter of July 9, 1974, took a legal position that it was not obligated to furnish such information. Not only is such legal position incorrect, I am persuaded that the totality of facts reveal that the Respondent reasonably knew the contentions of the Union and the potential relevance of such information. Under such circumstances, I am persuaded and conclude and find that, as of November 25, 1974, the Respondent had not furnished relevant information requested in the Union's June 27, 1974, letter.

Considering the facts relating to Respondent's letter of November 25, 1974, as supplying relevant information requested by the Union, I am persuaded and conclude and find that the facts do not reveal that the Respondent has furnished the information requested in the Union's June 27, 1974, letter, as to items 1, 3, 4, 5, 6, 7, 8, 9, and 10.

The Union's June 27, 1974, letter requested information relating to the transfer of operations between the

Standard Plant and the Waterbury, Bantam, Morris and Thomaston plants. The Respondent's letter of November 25, 1974, advised the Union that there had been no transfer of operations. The General Counsel and the Union contend that the response was conclusionary and did not furnish the Union information, as an example, to evaluate whether there had been covert transfers of operations.

Conceivably, the Respondent could continue all existing operations at the Standard Plant, and, however, move an operation in substantial effect by having the same operation performed by one or more plants but interrelated with other operations of the Standard Plant. Under such circumstances, a question could arise as to whether an operation had been moved. The very nature of some information requests reveals a need for back up information for an intelligent understanding or appraisal without blind acceptance. I am not persuaded that the Union's request for transfer of operations information is of such a nature as to reveal, in and of itself, a need for information to weigh the possibility of covert transfers of operations. However, if the Respondent has in fact engaged in covert transfers of operations, the letter is sufficient to apprise of the need for such back up information.

If there have been no transfers of operations, directly or indirectly, the Respondent has furnished the information requested thereto by the Union. If there have been transfers of operations, directly or indirectly, the Respondent has not furnished the information as requested by the Union as to transfers of operations.

Neither the General Counsel nor the Union has attempted to establish that the Respondent has in fact, directly or indirectly, transferred operations from its Standard Plant to the Waterbury, Morris, Bantam or Morris operations. Considering the foregoing, the facts are insufficient to reveal that the Respondent, by its November

25, 1974, letter, furnished the necessary and relevant information relating to transfers of operations. Nor, on the other hand, are the facts sufficient to reveal that the November 25, 1974 letter, in and of itself, constituted evidence of a refusal to furnish such information.

In the Union's June 27, 1974, letter, information was requested with respect to the transfer of bargaining unit employees when there had been a transfer of operations from the Standard Plant to the other operations. Neither the General Counsel nor the Union has attempted to establish that bargaining unit employees have in fact been transferred from the Standard Plant to the other operations. Essentially for the same reasons as regards the question of information relating to transfers of operations, the facts are insufficient to reveal that the Respondent by its November 25, 1974, letter furnished the necessary and relevant information relating to transfers of employees in connection with transfers of operations. Nor, on the other hand, are the facts sufficient to reveal that the November 25, 1974, letter in and of itself, constituted evidence of a refusal to furnish such information.

In the Union's letter of June 27, 1974, information was requested concerning the names of employees who performed work both at the Standard Plant in Torrington and at the Waterbury, Thomaston, Morris, and Bantam operations. The Respondent's November 25, 1974, letter set forth . . . "nor, to our knowledge, are there any people who are working both at the Standard Plant and at any of the other plants mentioned above." The facts reveal Respondent's awareness that its records reflected only transfers when there were transfers on the payroll. The facts would also indicate that the Respondent should be aware of circumstances such as the occa-

sions of Hughes' working away from the Standard Plant and at the Waterbury plant. Under such circumstances, a conclusionary response as was given is not an adequate response so as to be said to constitute that the information requested has been furnished.

In the Union's letter of June 27, 1974, the Union requested information relating to products partially processed at the Standard Plant and at Waterbury, Morris, Bantam, or Thomaston. The Respondent's November 25, 1974, letter indicated that there were no integrated processes. Clearly, the Respondent was aware of steel being cut off at the Standard Plant and being shipped to the Waterbury plant. Under such circumstances, a conclusionary response, as was given, is not an adequate response so as to be said to constitute that the information requested has been furnished.

The Respondent's November 25, 1974, letter did not purport to answer the Union's request for information relating to Items 1, 3, 6, 7, and 8 in the Union's June 27, 1974, letter.

Considering all of the foregoing, I am persuaded and conclude and find that the Union had a legitimate need for the information requested in items 1, 3, 4, 5, 6, 7, 8, 9, and 10 of its June 27, 1974, letter, in order to determine whether or not the Waterbury, Bantam, Morris, or Thomaston facilities were part of a merged or accreted Standard bargaining unit and, therefore, whether the Union had bargaining rights and responsibilities for such unit as merged or accreted. Such bargaining rights would not be merely bargaining rights of the Union but rights in which all of the employees in the Standard Plant unit had an interest.

In determining the Union's need for the information requested and the relevancy of such information requested, I have considered the facts relating to the 1969 de-

termination that the Waterbury facility did not constitute an accretion to the Standard Plant bargaining unit, and the procedural facts relating to the Union's filing and withdrawal without prejudice of an unfair labor practice charge in Case 1-CA-9811 alleging in effect that the Waterbury, Morris, Bantam and Thomaston employees were included in the collective-bargaining agreement covering the Standard Plant employees. Although it may not be probable, changed circumstances concerning the interrelationship of the various facilities may now warrant a determination that the Waterbury facility has been accreted to or merged with the Standard unit. Although it would appear that a proper and full investigation of the refusal to bargain charges in Case 1-CA-9811 would have subsumed therein an investigation into the facts and information sought by the Union in its request for information, and although a determination in effect that there was not sufficient evidence to proceed to complaint would be indicative that the Union's request for information is in effect an exercise in futility, it should be noted that a determination by the Regional Director, his staff, or staff members, that the Region does not have sufficient evidence to issue a complaint is not a litigated finding. The Regional Director, his staff, or individual staff members may have incorrectly evaluated the evidence that had been uncovered, may have incorrectly evaluated the case in a legal sense, and may not have secured or considered all of the necessary relevant evidence touching upon the issues.<sup>16</sup> Further, although the Regional office personnel may have discussed the investigative finding with the Union as regards the charge in Case 1-CA-9811, it should not be assumed that such dis-

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<sup>16</sup> The Region may have accepted conclusionary statements from the Respondent as to some of the issues in the investigation of the refusal to bargain charges, may not, based upon practical judgment, have pursued an inquiry into precise details relating to such conclusions.

cussion would reveal all of the details of the investigation, all of the evidence uncovered, or whether or not the Region had secured precise details as to all of the potential relevant evidence.

Considering all of the foregoing, I find no reason to reveal that the Union should be estopped from attempting to secure information from which it can evaluate and determine whether to attempt by arbitration or even by a new unfair labor practice charge to secure recognition as a bargaining agent in a possible merged or accreted bargaining unit. It is possible that the Union will receive information not previously disclosed. It is also possible that the Union might be able to make persuasive argument concerning information already disclosed to the Region but not to the Union, concerning its rights. It is clear that the Union would be in a better position to intelligently police and administer its contract if it knew the details and facts first hand, rather than on a hearsay or second hand basis.

There is no evidentiary basis to indicate that the General Counsel's regional staff did not conduct a full and proper investigation in the refusal to bargain charge in Case 1-CA-9811. Nor is there any evidentiary basis to indicate that the General Counsel and the Union have engaged in a concerted effort to use investigatory means not otherwise available in such case for a complete and proper investigation. Although a "request for information" may be somewhat similar to "discovery," the General Counsel's statutory authority to investigate unfair labor practice charges is broad and includes the use of subpoena power. Such authority and power clearly has as broad a sweep as "discovery." There is no apparent reason why the General Counsel would attempt to obtain indirectly that which he can obtain directly. Nor is there a basis for belief that the Union is attempting to circumvent the purposes of the Act. The Union's ac-

tions are consistent with its prior contentions that it represents the employees at Respondent's Bantam, Morris, Thomaston, and Waterbury plants by virtue of a merged or accreted bargaining unit theory and that it needs information related thereto for considerations in such regard and as for consideration as to actions to take in such regard to protect the bargaining unit employees' rights. The Union's entitlement to the information requested flows from its statutory rights as a bargaining representative and Section 8(a)(5) of the Act itself.<sup>17</sup>

The facts reveal that from June 27, 1974, to November 25, 1974, the Respondent did not purport to furnish the necessary and relevant information for bargaining or policing and administering the collective-bargaining agreement requested in the June 27, 1974, letter in items no. 1, 3, 4, 5, 6, 7, 8, 9, and 10. Considering all of the foregoing, I conclude and find that the Respondent, by

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<sup>17</sup> I find nothing in the Union's actions in withdrawal of the unfair labor practice charge (in Case 1-CA-9811) without prejudice, in thereafter requesting necessary and relevant information for policing and administering its contract from the Respondent, and in filing an unfair labor practice charge as to a refusal to furnish such information, to reveal an improper attempt to use rights not accorded to the Union by law. But see *General Electric Company*, 163 NLRB 198, 210, the facts, conclusions and findings therein relating to the dismissal of an alleged refusal to bargain allegation for refusing to furnish relevant information on the basis that a "request for information" constituted in effect an improper use thereof as "discovery", purportedly not available to the General Counsel. I would note that in my opinion such case should be narrowly construed since the General Counsel's investigatory authority has a broad sweep as does discovery. In any event, I am of the opinion that the rationale of the *General Electric* case as to the issue referred to, has been removed by the underlying theory in the Board's *Collyer* case (*Collyer Insulated Wire*, 192 NLRB 837) and related cases involving the Board's deferral to arbitration doctrine. Further, the facts in the instant case are dissimilar to the facts in the *General Electric* case in that the "request for information" was made at a time when unfair labor practice charges had neither been dismissed nor were pending.

such conduct, engaged in conduct violative of Section 8(a)(5) and (1) of the Act.<sup>18</sup>

The facts reveal that the Respondent on November 25, 1974, made a purported partial response to the Union's June 27, 1974, letter as to some of the items referred to above. The facts in such regard as to the items purportedly responded to are not sufficient to reveal that the Respondent has or had not furnished the necessary and relevant information requested. As to some of the other items requested in the Union's June 27, 1974, letter, and referred to above, it is clear that the Respondent has continued to refuse to furnish necessary and relevant information for bargaining and policing and administering the collective-bargaining agreement. By such conduct, it is clear that the Respondent has continued to engage in conduct violative of Section 8(a)(5) and (1) of the Act.

### III. The Remedy

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, it will be recommended that it be ordered to cease and desist therefrom and to take appropriate and affirmative action designed to effectuate the policies of the Act, specifically, that Respondent be ordered to furnish to the Union the information which it has been found that Respondent has violated the Act by not furnishing.

Thus, Respondent will be ordered to furnish the necessary and relevant information (for policing and administering the existing contract) requested in the Union's June 27, 1974, letter, in items 1, 3, 4, 5, 6, 7, 8, 9, and 10. It is clear that the Respondent had not furnished any information relating to these items before November

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<sup>18</sup> *Herk Elevator Maintenance, Inc.*, 197 NLRB 92.

25, 1974.<sup>19</sup> It is also clear that the Respondent has not furnished at any time information as to some of the items referred to. As to several of the items, the Respondent's letter of November 25, 1974, and other facts, in the total context of all of the facts, do not establish that the Respondent has properly furnished the information requested. Determination of whether the Respondent has actually furnished such information, however, can be made in the compliance stage of this proceeding.

Upon the basis of the foregoing findings of fact and upon the entire record in this proceeding, I make the following:

#### Conclusions of Law

1. The Torrington Company, Standard Plant, the Respondent, is an Employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 1645, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees of Respondent employed at its Standard Plant, exclusive of office clerical, and salaried employees, time-keepers, firemen, engineers, gatemen, watchmen, guards, executives, foremen, assistant foremen and subforemen and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.<sup>20</sup>

4. Local 1645, International Union, United Automobile, Aerospace, & Agricultural Implement Workers of

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<sup>19</sup> Said letter was sent to the Union after the filing of charges in this case and during the pendency of investigation of such charges.

<sup>20</sup> Respondent's Excelsior, Broad Street, and Wire plants, and Bonnie Mills facility are deemed covered by the collective-bargaining contract concerning such unit.

America, at all times material herein, has been the exclusive collective-bargaining representative of the employees in the unit described above within the meaning of Section 9(a) of the Act.

5. By refusing to furnish the above-named union information necessary and relevant for the Union's policing and administering the Respondent's and Union's existing collective-bargaining agreement, Respondent has engaged in unfair labor practices within the meaning of Section 8(a) (5) and (1) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law and upon the entire record, and pursuant to Section 10 (c) of the Act, I hereby issue the following recommended: <sup>21</sup>

#### ORDER

Respondent, The Torrington Company, Standard Plant, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local 1645, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, as the exclusive collective-bargaining representative of its employees in the unit described below, by refusing, upon request, to furnish information necessary and relevant for the Union's use in policing and administering the

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<sup>21</sup> In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

existing collective-bargaining agreement, or other such agreements, between it and the Union.

The appropriate collective bargaining unit is:

All production and maintenance employees of Respondent employed at its Standard Plant, exclusive of office clerical, and salaried employees, time-keepers, firemen, engineers, gatemen, watchmen, guards, executives, foremen, assistant foremen and subforemen and all supervisors as defined in Section 2(11) of the Act.

Respondent's employees at its Excelisor, Broad Street and Wire plant, and at its Bonnie Mills facilities are also covered by the existing collective bargaining agreement concerning the above unit.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist the above-named organization, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act, or to refrain from any or all such activities, except to the extent as such right might be affected by a lawful agreement as authorized by Section 8(a)(3) of the Act.

2. Take the following affirmative action designed the effectuate the policies of the Act.

(a) Upon request, furnish to the Union information necessary and relevant for the Union's use in policing and administering collective-bargaining agreements between the Respondent and the Union, including specifically, but not limited thereto, the information requested in the Union's letter of June 27, 1974, items nos. 1, 3, 4, 5, 6, 7, 8, 9, and 10.

(b) Post at its Standard Plant in Torrington, Connecticut, and at other facilities covered by its existing collective-bargaining agreement with the Union, copies of the attached notice marked "Appendix."<sup>22</sup> Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by the Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced or covered by any other material.

(c) Notify the Regional Director for Region 1, in writing, within 20 days from the receipt of this Decision what steps it has taken to comply herewith.

Dated at Washington, D. C.

/s/ Jerry B. Stone  
JERRY B. STONE  
Administrative Law Judge

## APPENDIX

[SEAL]

[SEAL]

## NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Local 1645, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America as the exclusive collective-bargaining representative of our employees in the unit described below, by refusing, upon request, to furnish information necessary and relevant for the Union's use in policing and administering the existing collective-bargaining agreement, or other such agreements, between us and the Union.

The Appropriate Collective Bargaining Unit is:

All production and maintenance employees employed by our Standard Plant, exclusive of office clerical, and salaried employees, time-keepers, firemen, engineers, gatemen, watchmen, guards, executives, foremen, assistant foremen, and subforemen and all supervisors as defined in Section 2(11) of the Act.

Employees at our Excelsior, Broad Street and Wire plants, and at our Bonnie Mills facility are also covered by our existing collective bargaining agreement concerning the above unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form, join, or assist the above-named labor organization, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities or other mutual aid or protection as

guaranteed by Section 7 of the Act, or to refrain from any or all such activities except to the extent as such rights might be affected by a lawful agreement as authorized by Section 8(a) (3) of the Act.

WE WILL, upon request, furnish the Union information necessary and relevant for the Union's use in policing and administering collective bargaining agreements between us and the Union, including specifically, but not limited thereto, the information requested in the Union's letter of June 27, 1974, item nos. 1, 3, 4, 5, 6, 7, 8, 9, and 10.

THE TORRINGTON COMPANY,  
STANDARD PLANT  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE  
DEFACED BY ANYONE**

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 7th Floor—Bulfinch Building, 15 New Chardon Street, Boston, Massachusetts 02114 (Tel. No. 617-223-3348).

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

Case No. 1-CA-10,137

In the Matter of:

THE TORRINGTON COMPANY, STANDARD PLANT  
and

LOCAL 1645, INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA

REQUEST FOR CONSENT TO  
HAVE REGIONAL DIRECTOR PRODUCE  
FILE IN CASE NO. 1-CA-9811

The Respondent, The Torrington Company, hereby requests, pursuant to Section 102.118 of the Board's Rules and Regulations, that the General Counsel grant his consent for the production of the Regional Director's file in Case No. 1-CA-9811, which file is presently in the Regional Office of the Board for Region One, located in Boston, Massachusetts.

The purpose for such request is so Respondent may comment thereon and introduce evidence as part of the record in Case No. 1-CA-10,137 now pending decision before the Board on exceptions from the decision of Administrative Law Judge Jerry B. Stone issued on October 17, 1975. (A copy of the decision No. JD-599-75 is attached as Exhibit A hereto.) A copy of the exceptions filed by Respondent on November 25, 1975, are attached as Exhibit B hereto.<sup>1</sup>

The reasons for said request are as follows:

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<sup>1</sup> Of relevance to this request is Exception No. 24.

1. During the course of the hearing, there was considerable discussion over the nature of the investigation by the Regional Office in Case No. 1-CA-9811 and the reason for the withdrawal of the charge by the Union which is also the Charging Party in the present case.

2. In his decision, the Administrative Law Judge speculated at great length about what "may" or "may not" have happened during the Regional Office investigation of the charge in 1-CA-9811 which led to the withdrawal of the charge. *Cf.* p. 27, lines 35-45, and p. 28, lines 1-10.

3. The Law Judge's self-styled "assumptions" as to the nature and extent of the investigation in Case No. 1-CA-9811 led to the drawing of unwarranted inferences which were taken into account by him and helped form the basis of his decision adverse to Respondent.

4. In view of the foregoing, Respondent believes it is entitled to have the file in Case No. 1-CA-9811 in the Regional Director's possession produced for the purposes of review by the parties and introduction as evidence into the record of the proceedings now pending in Case No. 1-CA-10,137 so that Respondent may perfect its exceptions and have the matter before the Board at the time of its deliberations.

Wherefore, Respondent prays the General Counsel grant its request by instructing the Regional Director for Region One to produce said file for the aforesaid purposes.

By: THE TORRINGTON COMPANY  
Siegel, O'Connor and Kainen  
Its Attorneys

By: /s/ Jay S. Siegel  
Jay S. Siegel

Hartford, Connecticut

December 2, 1975

ZEMAN AND MANTAK  
Attorneys and Counselors at Law  
18 North Main Street  
West Hartford, Connecticut 06107

William S. Zeman  
Ruth H. Mantak

Telephone  
(203) 521-4430

December 4, 1975

John S. Irving, Esq.  
General Counsel  
National Labor Relations Board  
1717 Pennsylvania Avenue  
Washington, D.C. 20570

Re: The Torrington Company  
Case No. 1-CA-10,137

Dear Sir:

This morning I received a copy of letter dated December 2, 1975, addressed to you by Jay S. Siegel, Counsel for the Respondent in the above captioned case. Enclosed with said letter was a Request seeking consent to have the Regional Director produce the file in Case No. 1-CA-9811.

Please be advised that the Charging Party objects to the aforesaid Request of Respondent's Counsel since it is a patent attempt to introduce evidence before the Board when no effort was made to provide such evidence before the Administrative Law Judge at the Hearings on June 24 and June 25, 1975 in Hartford, Connecticut.

If this request is granted, it would result in the anomalous situation whereby the Decision of the Administrative Law Judge would be attacked on the basis of evidence that the Respondent never sought to introduce into the record when the case was being tried. Obviously, what

the Respondent is seeking to accomplish would not only violate the due process rights of the Charging Party, but also is a patent attempt to disrupt due process in the administrative procedure of the Act itself.

Since a reading of the record clearly proves that the Respondent made no effort to utilize the procedure set forth in Section 102.118 of the Board's Rules and Regulations when the case was being tried, it, therefore, has waived its right to rely on such procedure after the case has been transferred to the Board.

Very truly yours,

/s/ William S. Zeman  
William S. Zeman

WSZ:mr

cc: John C. Truesdale, Executive Secretary, NLRB  
Robert S. Fuchs, Regional Director, NLRB Region 1  
Jay S. Siegel, Esq.  
Thomas J. Flynn, Esq.

REGISTERED MAIL  
RETURN RECEIPT REQUESTED

bcc: C. E. Harwood, Esq.

December 10, 1975

John S. Irving, Esq.  
General Counsel  
National Labor Relations Board  
1717 Pennsylvania Avenue  
Washington, D.C. 20570

RE: The Torrington Company;  
Case No. 1-CA-10,137

Dear Mr. Irving:

This letter will respond to the December 4th communication from the Charging Party in the above case regarding my request to have the Regional Director produce the file in Case No. 1-CA-9811 which I submitted to you last week.

Mr. Zeman's comments are misplaced. The reason prompting my motion arose primarily because of the decision of the Administrative Law Judge and was not presented during the trial in the form now existing. Accordingly, while it is true that ultimately a motion to supplement the record may be appropriate, nevertheless it was the *Judge's* actions which led to the filing of the request.

Very truly yours,

JAY S. SIEGEL

JSS:mlm

cc: John C. Truesdale, Executive Secretary, NLRB  
Robert S. Fuchs, Regional Director, Region 1, NLRB  
William S. Zeman, Union Counsel  
Mr. Joseph J. Palker

[SEAL]

NATIONAL LABOR RELATIONS BOARD  
OFFICE OF THE GENERAL COUNSEL  
Washington, D.C. 20570

Dec. 30, 1975

Jay S. Siegel, Esquire  
Siegel, O'Connor and Kainen  
60 Washington Street  
Hartford, Connecticut 06106

Re: The Torrington Company  
Case No. 1-CA-10137

Dear Mr. Siegel:

This will acknowledge receipt of your request of December 2, 1975, pursuant to Section 102.118 of the Board's Rules and Regulations that I consent to have Regional Director Robert Fuchs produce the "file" in the Torrington Company, Case No. 1-CA-9811, which is located in the Boston Regional Office. You state the purpose for such request is so the Torrington Company, your client, "may comment thereon and introduce evidence as part of the record" in the captioned case which is currently pending on exceptions before the Board.

You assert the following in support of your request:

- (1) During the course of the hearing, there was considerable discussion over the nature of the investigation by the Regional Office in Case No. 1-CA-9811 and the reasons for the withdrawal of the charge by the Union which is also the Charging Party in the present case.
- (2) In his decision, the Administrative Law Judge speculated at great length about what "may" or "may not" have happened during the Regional Office investigation of the charge in 1-CA-9811 which led to the withdrawal of the charge. Cf. p. 27, lines 35-45, and p. 28, lines 1-10.

- (3) The Law Judge's self-styled "assumptions" as to the nature and extent of the investigation in Case No. 1-CA-9811 led to the drawing of unwarranted inferences which were taken into account by him and helped to form the basis of his decision adverse to Respondent.
- (4) In view of the foregoing, Respondent believes it is entitled to have the file in Case No. 1-CA-9811 in the Regional Director's possession produced for the purpose of review by the parties and introduction as evidence into the record of the proceedings now pending in Case No. 1-CA-10137 so that Respondent may perfect its exceptions and have the matter before the Board at the time of its deliberations.

A review of the transcript in the unfair labor practice hearing in Case No. 1-CA-10137 shows there was discussion concerning whether or not there had been a determination on the merits by the Boston Regional Office in Case No. 1-CA-9811 and the reason for its withdrawal by UAW Local 1645. However, there was no discussion on the record concerning the contents of the investigatory file. In this regard, at page 80 of the transcript you stated that you were not interested in getting into the matter of production of files by the General Counsel. Again, the comments of Administrative Law Judge Jerry B. Stone which you make reference to were not related to what was contained in the investigatory file in Case No. CA-1-9811, but were concerned with his conclusion that any determination by the Regional Office in that case did not constitute a "litigated finding." The remaining portion of the Administrative Law Judge's decision you referred to, lines 5-10 of page 28, is concerned with statements of the Judge to the effect that he would not make certain assumptions concerning what may have occurred during

the investigation of Case No. 1-CA-9811. Accordingly, it does not appear that the Administrative Law Judge made "assumptions" as to the contents of the file in Case No. 1-CA-9811 which led him to make "unwarranted inferences" upon which he based his decision that Respondent should have provided the Union with the requested information. Moreover, the Administrative Law Judge concluded that the Union would be in a better position to administer its collective bargaining agreement if it knew the details and facts it sought by its request for information first-handed from the employer rather than possibly receiving second-handed information from the Regional Office as a result of having filed an unfair labor practice charge.

The formal documents in the file in Case No. 1-CA-9811, such as the charge and letter from the Regional Director approving the withdrawal are available to you for examination and copying at the Regional Office in Boston. In addition to the formal documents, the file contains documents such as affidavits and a final investigation report, which are an integral part of the investigatory file. The administrative investigation of unfair labor practice charges, pursuant to Section 10(b) and 3(d) of the National Labor Relations Act, as amended, is the exclusive function of the General Counsel and his agents, and is conducted for the purpose of obtaining evidence which will enable a determination to be made as to whether a formal complaint should be issued. The matters you seek pertain to the process of investigating, evaluating, and deciding whether a formal complaint should be issued. It is the policy of the Office of the General Counsel to preserve the confidentiality of evidence obtained during the course of an administrative investigation. Further, inter-Agency memoranda and communications of Government Agencies have historically been privileged from disclosure. See *Davis v. Braswell Motor Freight Lines, Inc.*, 363 F. 2d 600, 603 (C.A.

5, 1960); *K. C. Wu v. National Endowment for Humanities*, 460 F. 2d 1030, 1032 (C.A. 5, 1972); *E. P. A. v. Mink*, 410 U.S. 73, 86 (1973).

Accordingly, after giving this matter careful consideration, I must deny your broad request for production of the entire investigatory file in Case No. 1-CA-9811, as you have failed to state sufficient reasons why such records are relevant and necessary.

Sincerely,

/s/ John S. Irving  
JOHN S. IRVING  
General Counsel

223 NLRB No. 182

MFP  
D—1149  
Torrington, Conn.

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

Case 1-CA-10137

THE TORRINGTON COMPANY, STANDARD PLANT

and

LOCAL 1645, INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF  
AMERICA

## DECISION AND ORDER

On October 17, 1975, Administrative Law Judge Jerry B. Stone issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Party filed briefs in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, The Torrington Company, Standard Plant, Torrington, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. May 3, 1976.

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Betty Southard Murphy, Chairman

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John H. Fanning, Member

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John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

[SEAL]

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

THE TORRINGTON COMPANY,  
*Petitioner*

vs.

NATIONAL LABOR RELATIONS BOARD,  
*Respondent*

PETITION TO REVIEW AND SET ASIDE AN  
ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT:

The Torrington Company, a corporation incorporated under the laws of the State of Connecticut, maintaining its principal place of business at Torrington, Connecticut, respectfully petitions this Court to review and set aside an Order of the National Labor Relations Board issued on May 3, 1976, in a proceeding entitled, "The Torrington Company, Standard Plant and Local 1645, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America", being numbered by the National Labor Relations Board as Case No. 1-CA-10,137.

In support of this Petition, the Petitioner respectfully shows:

1. This Petition is filed pursuant to Section 19(f) of the National Labor Relations Act, as amended, 29 United States Code, Section 160(f), and in accordance with Rule 15(a) of the Federal Rules of Appellate Procedure.

2. On charges filed with the National Labor Relations Board on October 3, 1974, a Complaint was issued against the Petitioner by the Regional Director of the National Labor Relations Board for the First Region in Boston, Massachusetts on April 30, 1975. On October 17, 1975, Administrative Law Judge Jerry B. Stone issued a decision, findings of fact, conclusions of law, and recommended order. The Employer timely filed Exceptions and a supporting brief to the Board urging that it dismiss the Complaint. On May 3, 1976, a three-member panel issued a "short form" decision adopting *en toto* without any statement of reasons the Administrative Law Judge's findings of fact, conclusions of law, and his recommended order and holding the Employer in violation of Section 8(a)(5) and, derivatively, 8(a)(1) of the National Labor Relations Act, as amended. The Board panel ordered the Employer to cease and desist from refusing to bargain and directed it to furnish certain information to Local 1645 upon request as set forth more particularly in the Administrative Law Judge's decision.

3. Said Decision and Order of the National Labor Relations Board, *inter alia*, is contrary to law, in contravention of the terms of the National Labor Relations Act, as amended, not supported by substantial evidence in the record and in derogation of the Employer's rights under the law.

**WHEREFORE, Petitioner prays:**

(A) That this Honorable Court cause notice of the filing of this Petition for Review to be served upon the Respondent, as provided in Rule 15(c) of the Federal Rules of Appellate Procedure; and

(B) That the Court direct the National Labor Relations Board, in accordance with Rule 17 of the Federal Rules of Appellate Procedure, to file a copy of all documents, transcript of testimony, if any, exhibits, and other

material comprising the Record as defined in 28 USC 2112 in the proceedings before the National Labor Relations Board in Case No. 1-CA-10,137, and certify same; and

(C) That this Court take jurisdiction of the proceedings and the questions determined therein and make and enter a Decree setting aside in whole and vacating said Decision and Order of the National Labor Relations Board.

Dated at Hartford, Connecticut, this 26th day of May, 1976.

Respectfully submitted,

THE TORRINGTON COMPANY

By:

Jay S. Siegel

SIEGEL, O'CONNOR AND KAINEN  
Counsel for Petitioner  
Office and Post Office Address  
60 Washington Street  
Hartford, Connecticut 06106  
203/547-0550

May 26, 1976

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

No. 76-4135

THE TORRINGTON COMPANY,  
*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,  
*Respondent.*

CROSS-APPLICATION FOR ENFORCEMENT OF AN  
ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States  
Court of Appeals for the Second Circuit:

On May 26, 1976, pursuant to Section 10(f) of the National Labor Relations Act, as amended, (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, et seq.), The Torrington Company, instituted the captioned proceeding by filing with this Court a petition to review and set aside an order issued against it by the National Labor Relations Board on May 3, 1976, in a case appearing on the records of the Board as Case No. 5-CA-10137.

Pursuant to Section 10(f) of the Act and Section 15(b) of the Federal Rules of Appellate Procedure, the Board files this cross-application for enforcement of said order.

In support of this cross-application, the Board respectfully shows:

(1) The Petitioner is a party aggrieved by a final order of the Board. This Court therefore has jurisdiction of this cross-application for enforcement by virtue of

Section 10(f) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on May 3, 1976, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Petitioner, its officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon the Petitioner by sending a copy thereof postpaid, bearing Government frank, by registered mail, to the Petitioner.

(3) Pursuant to Section 10(f) of the National Labor Relations Act, as amended, and Rule 17 of the Federal Rules of Appellate Procedure, the Board is certifying and filing with this Court a list of documents, pleadings, and materials comprising the entire record of the proceeding before the Board as well as the findings and order of the Board in Case No. 1-CA-10137.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this cross-application and transcript to be served upon the Petitioner and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a judgment enforcing in whole said Order of the Board, and requiring the Petitioner, its officers, agents, successors, and assigns, to comply therewith.

/s/ Elliott Moore

ELLIOTT MOORE

Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D.C.

this — day of \_\_\_\_\_

## **PART B**

THE TORRINGTON COMPANY—  
STANDARD PLANT

WORKING AGREEMENT

May 11, 1973 - May 14, 1976

ARTICLE I

Recognition

The Company agrees to recognize the above designated Union as the sole and exclusive representative of all production and maintenance employees of the Standard Plant of the Company, for the purpose of collective bargaining in respect to rates of pay, hours of work, and other conditions of employment, provided that such representation shall not include office, clerical and salaried employees, timekeepers, firemen, engineers, gatemen, watchmen, guards, executives, foremen, assistant foremen and sub-foremen: provided, that any individual employee shall have the right to present his own grievance under the procedure set forth in the National Labor Relations Act.

ARTICLE IV

Grievance Procedure

Section 4.1

Any dispute or question in regard to wages, hours, and working conditions, or in regard to the interpretation or application of any of the provisions of this Agreement, shall be subject to the following grievance procedure.

- (a) First the employee involved will take up the grievance orally with his foreman. If the employee so chooses this may be done with his steward being present or at the request of the employee by his

steward alone. The Shop Chairman shall, without loss of pay, be allowed to participate in the settlement of grievances at the first step when requested by the employee involved or the department steward. If the grievance is not settled it may then be reduced to writing on the forms provided and given to the foreman for his written answer.

- (b) If the grievance is not settled in the first step, it shall be taken up by the chairman of the grievance committee together with such members of the committee as may be necessary, and the Manufacturing Manager or his authorized representative.
- (c) If the grievance is still not settled, it may then be taken up by the grievance committee, with or without the President of the local Union or his authorized representative and the Director of Industrial Relations or his authorized representative.

It is further agreed that upon the local Union's request a representative of the International Union may attend.

#### Section 4.2

Any employee directly involved in a grievance may appear at any of the steps of the grievance procedure, provided:

- (a) In the case of a discharged employee such appearance shall be permitted only at the third step of the grievance procedure, and
- (b) In a grievance that involves more than one (1) employee only a representative number of employees not to exceed four (4) may so appear, and
- (c) The Company shall not be obliged to compensate such non-members of the grievance committee for any time they spend in attendance at any such grievance meetings.

### Section 4.3

The Company will pay up to and including six (6) members of the grievance committee at their regular average earnings for time spent in handling grievances at the second and third steps. Union stewards may be considered as substitute members of the grievance committee for purposes of this section.

### Section 4.4

The Union may appoint at least one (1) steward for each department.

### Section 4.5

Settlement of all grievances involving the payment of money shall be retroactive to at least the date the grievance was presented in writing, but in no case more than thirty (30) days prior to the date the grievance was presented in writing in accordance with Section 4.1(a) above.

### Section 4.6

The Company will give its answer in each step of the grievance procedure within three (3) working days. The Union may appeal to the next step any grievance not answered within the specified period.

### Section 4.7

No grievance based upon a discharge shall be considered unless the same is presented to the Company within seven (7) working days after the discharge. No other grievance shall be processed unless it is filed within thirty (30) working days.

### Section 4.8

Second step grievances shall be heard at such time as the Company and the Union may designate each week for such step. Third step grievances shall be held each week if necessary at such time and place as may be mutually agreed upon by the Company and the Union.

#### Section 4.9

In order to provide a basis for prompt, fair and intelligent settling of grievances, complete details as to the occurrence and nature of the grievance must be submitted on the forms provided at the first step, including the section of the contract involved. It is agreed that no grievance will be disqualified because of any errors in submission under this clause.

#### Section 4.10

In any grievance involving an individual piecework price, the written answer of the foreman on the first step of the grievance procedure shall include the official piecework price and a description sufficient to identify it. If the identification of the piecework price is subsequently changed, the Union and the Shop Chairman will be so notified in writing.

#### Section 4.11

A grievance will be considered void if no appeal is taken within ten (10) working days from the date of the written decision of the foreman. A grievance shall likewise be considered void if a written request for a third step meeting is not made by the Union within ten (10) working days from the date of the written decision of the Manufacturing Manager or his designated representative.

If the written answer is not received by the Union within ten (10) working days from the date of the third step hearing, the grievance will be considered as denied and the Union may file for arbitration.

### ARTICLE V

#### Arbitration

#### Section 5.1

If a grievance is not settled after it has been processed through the three (3) steps described in Article

IV above, and if it is a grievance with respect to the interpretation or application of any provisions in this contract and is not controlled by Section 14.1 of Article XIV, (Management) it may be submitted to arbitration in the manner herein provided.

#### Section 5.2

A notice of intent to arbitrate sent by one party to the other shall not constitute a timely appeal under this section. A grievance shall be void, unless the appeal is sent by one party or the other to The American Arbitration Association within thirty (30) days from the date the decision of the Director of Industrial Relations, or his designated representative, has been given to the Union after the third step meeting required by the grievance procedure has been held. Unless the Company and the Union mutually agree to a different method of selecting an arbitrator, the arbitrator shall be appointed from the roster of the American Arbitration Association under the current Voluntary Labor Arbitration Rules of The American Arbitration Association.

The fees and expenses of the arbitrator shall be borne equally by the Company and the Union.

#### Section 5.3

The arbitrator shall be bound by and must comply with all of the terms of this Agreement and he shall have no power to add to, delete from, or modify, in any way, any of the provisions of this Agreement. The arbitrator shall not have the authority to determine the right of employees to merit increases. The arbitrator shall have no authority to set or determine wages except as provided by Section 6.21 of Article VI, Wages.

#### Section 5.4

The decision of the arbitrator shall be binding on both parties during the life of this Agreement unless the same is contrary, in any way, to law.

## ARTICLE XV

## Relocation and Subcontracting

## Section 15.1

In the event that any subcontract let to any independent contractor directly results in the elimination of any bargaining unit job, any employee affected thereby, either directly or by displacement by a senior employee, shall have the option of:

- (a) Accepting a transfer to another job or bumping into another job in accordance with the seniority provisions hereof; or
- (b) If he has at least seven and one-half (7½) years of continuous company service, receiving forty (40) hours pay at his average hourly earnings for each year of continuous company service, in lieu of continuing his recall rights under the contract.

## Section 15.2

If the Company transfers any operations from one of its existing plants in Torrington to another of its present plants in Torrington, or to a plant hereafter constructed or acquired by the Company within a radius of seventy-five (75) land miles from the center of the City of Torrington, the employees involved shall follow their jobs without loss of seniority or continuous Company service. In any such plant hereafter constructed or acquired within the above radius of seventy-five (75) land miles, the Company agrees to recognize Local 1645 as the bargaining representative for such employees, if it is not illegal to do so.

## Section 15.3

If the Company transfers any of its operating equipment from one of its existing plants in Torrington to

another plant beyond a radius of seventy-five (75) land miles from the center of the City of Torrington, the employees affected thereby either directly or by displacement by a senior employee, shall have the same option rights as described in Section 15.1 above.

#### Section 15.4

The Company will give the Union and the Shop Chairman advance written notice of any transfer of operations or operating equipment under Section 15.2 and 15.3 of this Article.

#### Section 15.5

The same payment as that described in Section 15.1 (b) above will be made to any employee who is terminated by the Company because of a shutdown or permanent abandonment of any operations in the Torrington area, if he does not exercise his transfer or bumping rights under Section 15.1(a) above. It is understood, however, that this section shall not apply to ordinary layoffs due to lack of orders.

#### Section 15.6

This Article shall apply only to subcontracts let or to transfers of equipment or to jobs involved in Section 15.5 made after September 27, 1963.

#### Section 15.7

Any dispute as to the application of this Article shall be subject to the grievance procedure and to arbitration, but not the Company's decision to subcontract work or to transfer operations or equipment.

## **PART C**

[191]

PROCEEDINGS

(9:30 a.m.)

JUDGE STONE: The hearing is in order.

Call your next witness.

MR. FLYNN: Mr. Milligan.

Whereupon,

WILLIAM G. MILLIGAN

was called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

JUDGE STONE: State your name and address?

THE WITNESS: William G. Milligan, 507 Maple Avenue, Cheshire, Connecticut.

JUDGE STONE: All right.

DIRECT EXAMINATION

Q (By Mr. Flynn) Mr. Milligan, you have been described as the chief spokesman for the Torrington Company in negotiating recent contracts, and also in processing grievances. Is that true?

A Yes.

Q In that capacity do you exercise authority in determining company policy in determining what position the company will take in regard to union proposals?

A I would say I make a recommendation on company policy. I don't think I have, certainly, final authority.

[192] Q But, your recommendation is sought?

A Yes. I would say so.

MR. FLYNN: Your Honor, I would like to examine this witness under what we used to call 43(b), and I forget what it is now.

MR. SIEGEL: 611(d).

JUDGE STONE: Do you have any objection?

MR. SIEGEL: The same objection I had yesterday, although one other question comes up, about the extent to which he is bound by the answers of this witness.

MR. ZEMAN: He's not bound at all under 611(d), which used to be 43(b). That's the purpose of 43(b).

JUDGE STONE: I will allow you to examine. I will give you some leeway.

Now, gentlemen, 43(b) still is in effect up until July 1st, but there's not that much difference between the two rules anyway. They both come to about the same thing. The new rule goes a little bit broader than the old one, actually. We were operating yesterday on the basis that 43(b) was out, but it's still in until July 1st.

MR. SIEGEL: I'm rushing the season.

JUDGE STONE: Well, there's not that much difference between the two, really. The ruling would have been the same either way.

MR. SIEGEL: I still object.

[193] JUDGE STONE: Okay.

Q (By Mr. Flynn) Mr. Milligan, I show you General Counsel's Exhibit 4 (showing document to witness), and ask you if you've seen that letter?

A Yes, sir.

Q After seeing that letter did you determine some answer to it?

A Yes, sir.

Q Is this the letter you wrote, General Counsel's Exhibit No. 5 (showing document to witness)?

A It is.

Q As I understand this letter, and I want you to correct me if you would, it's your position and that of the company that in response to the union's request for various pieces of information, that they were not entitled to them. Is that your position?

A Yes, sir.

Q Would you tell me why you didn't believe they were entitled to them?

A I think the letter speaks for itself.

Q Can you tell me why? I mean, you're the one who wrote the letter?

A Yes. Because Local 1645 is not certified or recognized for bargaining rights at any of those plants. Therefore, we felt the information was not necessary to give them— [194] that information.

Q You're familiar with the contract, which is General Counsel's Exhibit No. 2?

A Yes, I am, sir.

Q And you're familiar with Article 15.2 of that contract?

A Yes, I am.

Q Could you tell me what that article means?

A Well, I think that what the article means is that if we transfer operations and or employees, we are required to notify the union of that, and offer employees the opportunity to follow their jobs. I think the two examples of that, to my mind, explain 15.2. That's the transfer of the swaging operation from Waterbury— from Standard Plant in Torrington to Waterbury in 1968; and the transfer of the rear wheel bearing operation last year, to another facility in downtown Torrington, from Standard.

Q Is it also part of that article that the union can receive bargaining rights in the event of a transfer, for the new location?

A If it is not illegal to do so.

Q Well, sir, inasmuch as you've helped negotiate this contract, and inasmuch as you're aware of what this clause means, what do you believe would not be legal?

A I should correct myself first, that while I'm familiar with 15.2, I did not negotiate it. It was negotiated before [195] I came to the company.

Q Well, you did negotiate this contract, didn't you?

A Yes, sir.

Q And 15.2 was in it?

A Yes, sir.

Q Could I say that you negotiated it?

A All right.

Q Now, would you tell me, please, what you believe that phrase in Article 15.2 means? What is illegal, in your mind?

A Well, I think, again, the example is the Waterbury situation, back in '68, where the—we transferred an operation to a newly acquired facility in Waterbury, Connecticut. The union asked for representation rights there, asked to be recognized. And we felt that at that point it would be illegal to do so, inasmuch as it would have deprived the employees at the Waterbury plant, the employees who were working there when it was acquired, in non-union status, it would have deprived them of an opportunity for a secret ballot election as to whether they wished to be represented by the union.

Q Is that why you used the services of the National Labor Relations Board?

A I'm sorry. I don't understand the question.

Q Would you consider the National Labor Relations Board as [196] the vehicle to determine the legality of any recognition of the union in the event of a transfer?

MR. SIEGEL: Objection. I don't understand the relevancy.

JUDGE STONE: For what purpose is it?

MR. FLYNN: I'm trying to determine from the witness, your Honor, whether or not the only vehicle that can make a recognition legal or not is the Board, in their opinion.

MR. SIEGEL: I claim that is irrelevant to the issues before you.

JUDGE STONE: Does it make any difference whether he believes it's correct, or not. Isn't it a question of whether or not you have asked for information, and if you've established that information is relevant and necessary and it hasn't been given?

MR. FLYNN: Well, let me go at this a different way.

JUDGE STONE: All right.

MR. FLYNN: I'm trying to get to that point that you just raised.

Q (By Mr. Flynn) Do you consider it illegal to have the union seek to obtain recognition through the vehicle of arbitration?

MR. SIEGEL: Objection. Again, what has that got to do with this case?

JUDGE STONE: I'll sustain the objection. I don't really see what he thinks has to do with it. The question is, has [197] the union requested relevant and necessary information within the meaning of the Act, and has it been refused.

Q (By Mr. Flynn) You're also familiar, sir, with Section 15.7?

A Yes. I believe so.

Q And in that section it states that any dispute as to the application of this article shall be subject to the grievance procedure and to arbitration. In part that's what it says.

You're familiar with the entire matter?

MR. SIEGEL: I object to this procedure, Judge Stone. Counsel has not read the entire section. No copy of the section is before the witness. I ask that the witness be permitted to look at the entire section, if he's going to be asked a question about it.

JUDGE STONE: All right.

Q (By Mr. Flynn) I show you General Counsel's 2, and I point your attention to 15.7 (showing document to witness). Would you read it, please?

A Any dispute as to the application—

Q To yourself?

A Okay.

(Pause.)

Yes. I've read it.

Q In your opinion, before the union files grievances, [198] which would get to your—well, when a union is attempting to determine whether or not there's a viola-

tion of the contract, do you believe that the union is entitled to request information from the company?

A I suppose they are. Yes. And they do.

Q In this particular instance, in the union preparing itself to determine whether or not there's a violation of 15.2, do you believe that they should be entitled to certain information?

A I think that information that is pertinent, and that information which involves a situation in which they have bargaining rights.

Q All right. Now, I'm going to show you General Counsel's Exhibit No. 4, and ask you what information you think is pertinent in that request?

MR. SIEGEL: Objection. I think that calls for a conclusion of the witness. I think that's one of the questions, Judge Stone, before you. What information contained in that list—he's asking what information the company considers to be pertinent.

MR. FLYNN: Of course.

MR. SIEGEL: I think that's one of the questions you have to decide.

JUDGE STONE: I'll sustain the objection.

MR. FLYNN: Your Honor, it seems self evident to me— [199] excuse me.

Q (By Mr. Flynn) Mr. Witness, did you at any time provide the union with an answer to any of this requested information contained in General Counsel's Exhibit No. 4?

A Well, I think our response is indicated. I'm sure it's in the record, my letter of November.

Q I'm asking, did you give them an answer to any part of this letter, which is General Counsel's Exhibit No. 4?

A Yes, sir. We did, in November of 1974.

Q I'm going to show you General Counsel's 8, and ask you if that's (showing document to witness) the response?

A Yes, it is.

Q Now, did you consider that a full response to the June 27th request of the union?

A Yes. This is what the company felt was an appropriate and proper response to the request for information.

Q Why did you think it was appropriate and proper?

A Because we thought that this, what information I did supply in this letter, was the information that was relevant as we see the contract.

Q You state here in this letter, in the middle of the second paragraph, "Likewise no bargaining unit employees in your Local have been transferred, nor to our knowledge, are there any people who are working both at the Standard Plant and at any of the other plants mentioned above."

[200] I ask you, what did you use to obtain that knowledge? Did you use any source materials?

A Yes. Certainly, as far as transfer of bargaining unit employees, we have in our office—any status change, involving any employee, comes through our office. Records and files are maintained.

Q Before we go into the specifics, because we had some testimony, which I believe you heard, from Mr. Franculli yesterday, in regard to people going to other satellite locations and working there, but before we go into that—

MR. SIEGEL: Objection. People—that assumes a fact not in evidence. I think he testified there was one person, David Hughes. The other was a salaried person. Now, the word people implies that there are numbers, and I would ask through you, Judge Stone, that the questions be confined to the testimony as it was made yesterday.

Again, assuming, we're not including the swaging operation.

JUDGE STONE: Do you want to rephrase your question?

MR. FLYNN: Let me ask the question I wanted to ask.

Q (By Mr. Flynn) What in your definition, sir, is a transfer of employees?

A When an employee transfers from one plant to another, and is placed on a different payroll; performs work exclusively at the other plant. That's a transfer. When he [201] transfers, physically and on paper, from one plant to another, one payroll to another.

Q How long a time do you consider the work at the other plant to be before you consider it a transfer?

A I don't know. It's hard to put a time on it, because it happens very infrequently. And I really can't imagine it being for a duration of more than a few days at any one time. And it really doesn't happen that often; it's hard to put any specific time on it.

Q What plants do you believe transfers—are involved in transfers? All the satellite plants and Standard Plant? Or just some?

MR. SIEGEL: Objection. I don't understand the question.

MR. FLYNN: I don't understand the answer. I want to be sure that when we're talking about transfers we're talking about transfers to all the satellite operations that we're speaking of here in the complaint.

JUDGE STONE: The problem I'm having is that you're using the terminology believe. I mean, if he knows something it's a different thing. If somebody believes something, it may or may not be.

MR. FLYNN: Well, I use that term, your Honor, because this man is in the position to determine the broad general policy in regard to transfers. And he knows what they are.

[202] JUDGE STONE: Well, if he knows, then he doesn't have to believe.

MR. FLYNN: Well, he's the one who creates the belief for the knowing. He's the one who establishes what a transfer is.

MR. SIEGEL: A transfer is a transfer. It either takes place or it doesn't take place.

MR. FLYNN: We don't know what a transfer is.

MR. SIEGEL: He just told you.

MR. FLYNN: I'm trying to find out.

MR. SIEGEL: He just told you. A transfer—

MR. FLYNN: I'm trying to find out further, as to whether or not that transfer only exists between Standard Plant and Thomaston, or the Standard Plant and Waterbury, or the Standard Plant and all the others.

JUDGE STONE: I'm not cutting you off from going into it. I do think the use of the terminology believe leaves something vague.

Q (By Mr. Flynn) Does a transfer involve the moving of a person from the Standard Plant to any or all of the satellite plants?

MR. SIEGEL: Objection. Now this corporation, Judge Stone, has probably—at least a dozen plants, England, Portugal; South Bend, Indiana; Clinton, South Carolina; Tiger River, South Carolina; Orange, Massachusetts. Now, the [203] the home plant, the home of the Torrington Company is in Torrington. And I think that the question ought to be directly and specifically worded so that the witness has a fair opportunity to answer the question.

MR. FLYNN: I don't think we consider—

MR. SIEGEL: There are other satellite plants.

MR. FLYNN: We're talking about—I gave a definition yesterday of a satellite plant, and I said I'm going to call Waterbury, Thomaston, Bantam and Morris the satellite plants.

MR. SIEGEL: Are those the ones you're talking about?

MR. FLYNN: Precisely.

JUDGE STONE: All right. Go ahead.

MR. SIEGEL: All right. As long as we understand that definition on the record, then we have no problem.

THE WITNESS: Would you give me the question again? I'm sorry?

Q (By Mr. Flynn) Does a transfer consist of moving a person from the Standard Plant to any and/or all of these satellite plants?

A If an employee, as I described earlier, leaves the Standard Plant, goes to the payroll of another plant, works there, it's a transfer.

Q To your knowledge, within the past year, have you had any such transfers?

[204] A No, sir.

Q How do you know?

A As I said earlier, any change in the status of an employee goes through our office.

Q How does it get to your office?

A It's initiated in whatever department he was working or he leaves. Any personnel transfers or change of status of an employee winds up in our office, in our files.

Q 15.2 states that if the company transfers any operations. Yesterday we attempted to get a definition of what operations meant. Could you tell us what operations mean—that word in 15.2?

A Well, again, I think the transfer of the swaging operation in 1968 is the best example I can give of what an operation is. There we took that operation and moved it to the Waterbury plant. We moved the machinery. We offered opportunities to go with the job to the employees involved. That's a transfer of an operation.

Last year we transferred the rear wheel bearing operation a newly leased facility in downtown Torrington. And this was a transfer of an operation.

Q Is it essential in your definition of a transfer of operations to transfer machinery?

A I suppose it would most typically happen. I don't know that it's essential, because I think that the—again, [205] the key to the transfer of an operation, to me, implies that an operation that was being performed in

one place is transferred to another, and is no longer performed in the original place.

And it's possible that you might not have to move the equipment to do that. You might put in brand new equipment, but to me the operation would be transferred.

Q And when there is an operation transfer, does it necessarily mean that employees would be affected?

A Yes, I think it would; because it would imply, as I said before, that the fact that you were no longer performing the operation in one plant would obviously have some impact on the employees who were previously doing that work.

Q In your definition of operation is it possible to include the non-performance of a certain operation on a certain product?

A I'm not sure I understand.

MR. SIEGEL: Hold it. Objection. Now we're getting into a hypothetical situation. We're speculating. The questions are speculative; we're hypothesizing. And again the witness has answered what he considers to be a transfer of operations. Now, we can sit here all day and hypothesize. And I think that we've reached the limit, and I'm going to object.

JUDGE STONE: Overruled. Go ahead.

[206] Q (By Mr. Flynn) Yes?

A Would you give it to me again?

Q I'll try. Is it possible to start performing a certain operation on a certain product, and then move that operation into one of the satellite plants?

A Is it possible to do that, are you saying?

Q Yes?

A (Pause.)

Q I'm just saying about a product?

MR. SIEGEL: Can I hear the question read, because Mr. Flynn changed his terminology right in the middle of the question, and changed the use of the word that he used originally. He talked about one thing, and then

he said in that case would the blank—and the second time he referred to it, he did not use the same word. He changed the word.

This is not cross-examination. I'd like to have the question read again, out loud, if I could, please; because I might want to object to it.

MR. FLYNN: Do you want me to phrase the question again?

MR. SIEGEL: Yes.

Q (By Mr. Flynn) Is it possible, in your definition of change of operations, for the company to start performing a certain operation on a certain product, and then move that [207] operation to one of the satellite plants?

A I have to say I'm a little confused with the interchange of product and operation.

Q Let me give you an example. You heard a little bit of the testimony—no. I don't believe you were here.

There was some testimony yesterday about experimental production, piston bearings—

A I didn't hear that.

Q I think you were gone.

Is it possible, when making piston bearings in the Standard Plant—this is where they were made—that instead of deburring the bearings in the Standard Plant, that the deburring of the bearings would be sent to Thomaston?

MR. SIEGEL: Objection. That's a hypothetical, speculative question. Is it possible that? Judge Stone, we're either going to deal with the facts and what's happening, or we're going to deal with fantasy. We're dealing in fantasy at this point and I object.

JUDGE STONE: Overruled.

MR. SIEGEL: If he wants to ask him about what Ms. Cisowski testified to yesterday, I'm not going to object. That's fact. That's what happened.

MR. FLYNN: Your Honor, I was merely giving an example of what I meant. The witness said he didn't know what I meant.

[208] MR. SIEGEL: Well, I object to speculative, hypothetical examples.

JUDGE STONE: Well, overruled. I'm going to allow it, but basically you're going to have to establish that things have or have not been done.

MR. FLYNN: I'm just using it as an example.

JUDGE STONE: Okay. I said you can go. Gentlemen, let's move.

MR. FLYNN: That's the type of thing.

JUDGE STONE: The fact that it's possible may not establish anything, but I'm going to allow you to ask it.

THE WITNESS: Your question is, is that a transfer of operations?

Q (By Mr. Flynn) Yes?

A From the example you give, I'd say no; because I assume, with what I know of what Ms. Cisowski testified to yesterday, that her job continued, her work continued. I would assume, at least you haven't told me otherwise in the example, that we would continue to have a deburring operation in the Standard Plant. Employees would presumably still be working on that, so I would not consider that a transfer of operations.

Q You mean because employees have not stopped working on deburring in the Standard Plant?

A They're still deburring. We still, therefore, would have a deburring operation in the Standard Plant.

[209] Q Is it possible, under your definition, again, to move the deburring operation on this particular product to one of the satellite plants, and call that a change of operations, a transfer of operations?

MR. SIEGEL: Objection. Again, it's hypothetical. This isn't advancing the record any. I don't know where we're going.

JUDGE STONE: Overruled. Go ahead.

THE WITNESS: I'm sorry. Would you ask that again, please?

Q (By Mr. Flynn) Would it be possible to consider it a transfer of operations for the deburring operation on the piston bearings to cease in Standard Plant, and move to a satellite plant, although no employee in Standard Plant has been laid off?

A I would still not consider that a transfer of operations.

Q Well, now, let me see if I understand you right. One of the essential things in transfer of operations, to you, is that an employee be affected. Is that right?

A Yes. I think so. That's fair to say.

Q Well, how do you consider that an employee will become affected?

A Well, I think, as I said before, if we cease doing something we've previously done, and as a result of that the employee does not have a job or work to do, then it has [210] an impact on that employee.

Q How about the employee not having the work he normally would have had, but for the transfer of the operation?

A Normally?

Q Yes?

A Well, what—can I ask you what you mean by normally?

Q If the operation was continued in the Standard Plant he may be receiving overtime. Is that not an effect on the employee?

A I don't consider overtime to be—meet the definition of normal. I didn't understand you as saying that.

Q Well, at this present time is there much layoff in the Standard Plant?

A There is some, sir. Yes.

Q Is it substantial?

A I would think so. Yes. I'd classify it as such.

Q Is there much layoff in the satellite operations?

MR. SIEGEL: Objection. We're not required to answer any questions as to our work force at any of the satellite plants.

JUDGE STONE: I'll sustain the objection.

Q (By Mr. Flynn) Do you contemplate any shut-down at Torrington Standard Plant in the near future?

MR. SIEGEL: Objection. I don't see that that has anything to do with this case. The case involves a request [211] for information about—

JUDGE STONE: I'll sustain the objection.

MR. FLYNN: Your Honor, we're trying to show that employees of Standard Plant are being affected, and they are being affected because, in our opinion—which I grant you is not fact—operations which would normally be done at Standard Plant are now being done in the satellite operations.

And I again I get back that the point is that we don't know, and this is the reason for the request for information. Now, the definition of transfer by the company indicates that they do not consider anything to be a transfer until employees are affected. We are having employees affected. So, why can't they answer the information? Or, why don't they answer the union's request? Except by saying there is no transfer. Their definition of transfer is quite different.

JUDGE STONE: All right. Go ahead with your next question.

MR. FLYNN: I couldn't convince you to have him answer the question on the satellite operations?

JUDGE STONE: Go ahead.

MR. FLYNN: May I have a moment, your Honor?

JUDGE STONE: All right.

(Pause.)

Q (By Mr. Flynn) There was some testimony, which I believe [212] you did hear yesterday, in regard to steel which was cut at the steel crib in the Standard Plant,

and it is being worked on in the Waterbury plant; and that that work, plus blueprints, goes down to the Waterbury plant, and some operations performed on that steel, which could be performed in the Standard Plant.

Did you hear any testimony relating to that?

A I heard some testimony about the cutoff, but it was not as specified as you've just rendered it. I didn't understand it to be that detailed.

Q I just summarized what I believe to be the testimony. Is that summarization of mine at variance with what you know to be the facts?

A I do know that for a period of years there has been cut off work performed in the Standard Plant, on work that is done in the Waterbury plant. Yes. The impact of that has been, I suppose, that it's brought more work into the Standard machine shop.

Q Has that work, that operation, increased the work in Waterbury?

A I doubt it, because the work existed in Waterbury prior to having the cutoff done down there, as far as I know.

Q Is there more of that steel cutting being done, being shipped to Waterbury?

A I think a great deal less than was the case previously.

[213] Q When did it start being less?

A Well, I would think over the last couple of years there's been a reduction in it, but I'm not sure.

MR. FLYNN: May I have a minute, your Honor?

JUDGE STONE: Surely.

(Pause.)

Q (By Mr. Flynn) You state, in the final sentence here that "products at each plant continue to be manufactured, as they have in the past, on a separate basis and without any integrated production operations whatsoever."

Now, we just talked about the cutting of the steel. Is there any integration there?

A It's—I would say it's a service that is purchased by the Waterbury plant, that's provided by the Standard Plant. It's not an integrated operation.

Q You'd say without any integrated production operations whatsoever? Obviously this is an integrated production operation?

A I don't consider it to be one. No, sir.

Q Well, what is?

A Well, I think a typical example of an integrated production operation is found in our two plants in Torrington, the Broad Street plant and the Standard Plant. The Broad Street plant is the starter operation; makes pins, rollers; which go on to the Standard Plant and are assembled [214] into bearings. That is, to me, an integrated production sequence that occurs on a repetitive basis. That's the way we make them. They start at Broad Street, and go to Standard.

Q Well, are there any products or any operations that are partly done in the Standard Plant and partly done in the satellite operations?

A Yes. I think there are. Yes.

Q And both of these operations are integrated to produce a product?

A No, sir. Not under my definition. No.

Q Well, your definition of integrated escapes me. I still don't know what you mean. You've given me an example, but the example seems to fit operations between the Standard Plant and the satellite plants, too?

A No. I don't think it does.

Q To me it does. You have one operation being performed in the Standard Plant, or one of the Standard plants, being moved to another locality, and another operation being performed on that product there; the end result being a completed product, but in two localities, with different operations being performed on the product.

Do you not have similar operations in regard to the Standard Plant and the satellite plants?

A No, we don't.

[215] Q There's no product that is partly worked on in the Standard Plant and partly worked on in the satellite plants?

A There are orders, perhaps, that are; and if the Standard Plant does not have the equipment or the facilities, we may very well have it done at some other plant. Or we may send it to an outside vendor.

Q Do you have it done?

A I think in some cases we do. Not always.

Q Then, why do you say that there is no integrated work being performed?

A Because the Standard Plant, in the example I gave, with Broad Street, to us that's an integrated operation. That's how we do it; that's how it was set up. It's a consecutive sequence of production that's done all the time. It may very well be on a specific order, where the Standard Plant does not have the equipment to do a particular job, yes; they may send it to one of our other plants, or they may send it to an outside vendor, on an order basis.

Q Whether it's on an order basis, or not, I'm going to ask you again—isn't it true that there are products which are worked on at the Standard Plant and at the satellite plants?

A There are orders where some work may be done, where we don't have the equipment to do it at the Standard Plant. Yes.

[216] Q I'm asking you straightforward, are there products that are worked on at the Standard Plant and the satellite operations?

A Yes.

Q Why, in this letter, did you say that the products at each plant continue to be manufactured on a separate basis, and without any integrated production operations whatsoever?

A Because they are, as I've said before. I don't consider the examples you've given me to be an integrated production operation.

Q Is it fair to say, then, that this letter is written from your position as to what you consider to be integrated, what you consider to be a transfer of operations? Your definitions of those?

A Well, I certainly expect that it would express the company's definition. Yes. It's our letter.

Q But it doesn't necessarily mean that in the normal definition of transfer of operations that these don't take place, does it?

A All I can is that it expresses what our feeling is, what our feelings are about an integrated production sequence.

Q Is your definition of transfer of operations—is that as clear cut as your statement that there's no integrated production operations? The same type of thought process going on in your mind?

[217] MR. SIEGEL: Objection. I don't think that's—

JUDGE STONE: I'll sustain the objection.

Q (By Mr. Flynn) Having answered the questions now, do you consider this sentence you wrote in the letter to be a full answer to the union's request for information, when you state that there is no integrated production operations whatsoever?

A Yes, I do.

Q That, in your mind, knowing what you've just stated in your testimony, is a full and fair presentation of the facts?

A Yes, sir.

Q Although you admit that there are products that are worked on in one plant, at the Standard Plant, and the satellite operations?

A Yes, but I don't consider them to be integrated.

Q And in your definition of transfer of operations you don't consider an operation to be transferred, either, unless somebody is laid off? Is that right?

MR. SIEGEL: Objection. That's not his testimony.

MR. FLYNN: That's a question.

MR. SIEGEL: Well, you're cross-examining—

MR. FLYNN: I'm examining under 43(b).

MR. SIEGEL: But at this point you're argumentative.

JUDGE STONE: Overruled.

[218] (By Mr. Flynn) Is it your definition of transfer of operations—can there be any transfer of operations, in your mind, unless there's a layoff of employees?

A Layoff—no. As I said, I think it would be if it has an impact on employees. This could be a layoff. There could be a transfer in lieu of layoff, a variety of different things that might happen.

Q So, if the operation is transferred, and it has an impact on employees—which is a very broad term, now—you would consider that to be a transfer?

A I think I said that several times.

Q Are there any operations being performed in the satellite plants at this point in time which have been performed in the Standard Plant, which have been moved, which have an effect on employees in the Standard Plant? I want you to think about that word "effect"?

MR. SIEGEL: Could I hear the question, please?

JUDGE STONE: Do you want to read it back to him?

(The last question of the witness was read back by the reporter.)

MR. SIEGEL: I object. Well, the question is partially objected to on the basis that it involves operations at the satellite plants. I assume he's—the testimony has been what's been moved; and the answer has been, to the satellite plants, swaging. Did that have an effect at the [219] Standard Plant? Of course. The swaging is no longer even done there.

MR. FLYNN: Your Honor, I would like counsel to make his objections and stop making speeches.

MR. SIEGEL: I mean, I just don't see where this—

MR. FLYNN: I—

MR. SIEGEL: I don't think this question—

MR. FLYNN: Please, at this point, he's beginning to lead the—

MR. SIEGEL: I'm not leading the—

JUDGE STONE: Gentlemen, one at a time.

Objection overruled.

MR. SIEGEL: I have a great deal of trouble with these questions, mainly because he's using words that I think are distorted, frankly. Well, he's never worked at this company; he doesn't understand manufacturing.

JUDGE STONE: Gentlemen, I've overruled the objection. Go ahead.

Q (By Mr. Flynn) Do you know of any operations performed in the Standard Plant, which moved to the satellite plants, which affect Standard Plant employees?

A Other than the transfer to the Waterbury division in '68, there have been no operations transferred from the Standard Plant to any of the other plants you're taking about.

[220] Q Have there not been products, that have been made in the Standard Plant, now being made in the satellite operations?

A I'm not aware of any.

Q Do you know whether or not there have been?

A No, I don't.

Q When you wrote this letter, in which you say no operations have been transferred from the Standard Plant to any of the other plants, did you check that phase of the company's business?

A Yes, I did. And any change, any transfer of operations to any of those plants, would have been done only with the approval of my office. And there were no transfers.

Q Were you checking products that were made in the Standard Plant that are now being made in the satellite operations?

A My answer again is there was no transfer of operations.

Q That's not my question. My question is, were there products being manufactured in the Standard Plant that are now being manufactured in the satellite plants?

A Products, sir?

Q Products?

A No.

Q A type of bearing, if you will?

A No, sir.

A There's none?

[221] A No, sir.

Q What about the movement to Waterbury of blueprints in determining work on the cut steel from the Standard Plant to Waterbury? Why did you have to move blueprints?

A I assume in order for them to perform the work, perform whatever was being done down there.

Q Done where?

A In Waterbury.

Q Well, why did you have to move blueprints from the Standard Plant to Waterbury?

A I would assume because the blueprints go with the work, and it's necessary to have them in order to perform it.

Q Well, what were the blueprints doing in the Standard Plant?

A I really don't have the answer to that. I have no idea.

Q Do you deny this happened?

A I can't deny or confirm it.

Q Well, you've heard testimony that the blueprints were moved from the Standard Plant down to Water-

bury, along with the work to be operated on? You heard that testimony yesterday?

A Yes.

Q Did you attempt to check it?

A Did I attempt to check it yesterday? No, sir.

Q Did you ever attempt to check such type operations [222] before you wrote this letter?

MR. SIEGEL: Objection. The use of the word operations by counsel is improper. The witness has testified that the company does not consider something as the cutoff steel situation to be a transfer of operations.

MR. FLYNN: He has defined—

MR. SIEGEL: I think—

MR. FLYNN: —transfer of operations—

MR. SIEGEL: —my objection—

JUDGE STONE: Look. You're real fine, all of you, but please wait while someone is speaking till they finish. Then I can hear everyone.

Go ahead.

MR. SIEGEL: You know, we're going around, and around, and around on this. I don't know how long you want to keep going around, but the fact—the company's position is, and I'll state it on the record—okay, as counsel—that the sort of thing that Mr. Flynn is now asking about is not and never has been considered by the company as a transfer of operations within the meaning of the contract. And that he can ask questions from now till Christmas, but it is not going to change the company's position; because we're here on trial because that's our position.

Now, I think, if you want to sit here all day, Judge Stone, and hear the same answers to the same questions, that's [223] up to you. But frankly, you're not going to get any different answers.

JUDGE STONE: All right.

Overruled. Go ahead.

THE WITNESS: Can I have the question?

MR. FLYNN: Well, let me try and rephrase it.

Q (By Mr. Flynn) Why was it necessary to move blueprints from the Standard Plant to Waterbury, unless you were having a change in operations?

MR. SIEGEL: Objection.

MR. FLYNN: Or a transfer?

MR. SIEGEL: The witness has testified he doesn't know why. You're assuming that he knows why. He said he doesn't know. What do you mean, "unless it was necessary?"

MR. FLYNN: I haven't gotten an answer.

MR. SEIGEL: He doesn't know that.

MR. FLYNN: He hasn't even answered yet.

JUDGE STONE: Overruled.

Go ahead. He can answer if he knows:

THE WITNESS: I don't know, sir.

JUDGE STONE: All right.

Go ahead.

MR. FLYNN: I think I will stop there.

JUDGE STONE: Do you have any questions?

MR. ZEMAN: Yes. I would like to ask some questions, [224] your Honor. And I also am questioning this witness pursuant to what your Honor pointed out this morning, as of this date is still Rule 43(b).

JUDGE STONE: All right.

Q (By Mr. Zeman) Now, Mr. Milligan, when did you first hear that you were going to be a witness here today?

A When did I first hear?

Q Yes? Were you notified by somebody? You left before the hearing closed yesterday, didn't you?

A Yes.

Q At some time after that, before this morning, did anybody notify you that your presence was requested here as a witness?

A Yes. Mr. Siegel did.

Q When did he tell you?

A I don't know the exact time. Yesterday evening.

Q Yesterday evening?

A Yeah.

Q Now, prior to coming here today, have you discussed your being a witness and any possible testimony with Mr. Siegel?

A Of course.

Q And also it's true, isn't it, that before you wrote and sent General Counsel's Exhibit 8, the letter of November 25th, that you consulted counsel before you wrote [225] and sent that letter?

MR. SIEGEL: Objection. I don't want to get into a privileged—

MR. ZEMAN: That's not privilege, to ask him if he talked to counsel. It'd be privilege if I asked him what he said.

MR. SIEGEL: Okay. As long as it's understood that—

JUDGE STONE: Gentlemen, you're fine except for the one point, that you're kind of like the Chicago lawyers. You never let anybody else finish. So, I ask all of you to be a little more careful about that.

MR. SIEGEL: All right. I have no objection to the question, as long as it's understood we're not opening the door to privilege.

MR. ZEMAN: It's understood that way.

MR. SIEGEL: Okay.

MR. ZEMAN: The question simply is—

Q (By Mr. Zeman) When you prepared, and before you sent, and when you wrote General Counsel's Exhibit 8, did you consult counsel?

A Yes, I did.

Q Now, calling your attention, Mr. Milligan, to General Counsel's Exhibit 8, in the second paragraph you say "Likewise no bargaining unit employees in your Local have been transferred nor, to our knowledge, are there any [226] people who are working both at the

Standard Plant and any of the other plants mentioned above."

Now, why did you put the phrase in there, Mr. Milligan, "to our knowledge"?

A Well, I don't claim infallibility, Mr. Zeman. So, it's possible, as it is with anything, I guess, that something could have gone by us. So I said "to my knowledge". I'm not infallible.

Q Didn't you put it in there, as a matter of fact, Mr. Milligan, because there are things that go on, in connection with transfer of work, or operations, or interchange of functions, production functions and material functions, between the Standard Plant and other plants, including the four satellite plants, that don't go through your office, so you wouldn't necessarily know about them?

A Well, can we break that down? You talked about transfers of operations, and I would say no. Transfers of operations would be cleared through my office.

Q What wouldn't be cleared through your office?

A Well, you gave a couple of other examples. Why don't you try those, and I'll—it's quite possible there could be material shifts, something like that, that I wouldn't actually know about on a continuing basis.

Q And isn't it also true that part of work on a product was done in the Standard Plant, and then it was sent down to [227] one of the satellite plants, for further work on that product, that wouldn't go through your office, and you wouldn't necessarily know about that?

A Transfer of operations information would go through my office, definitely. As to the others, not necessarily.

Q So, now, what do you call transfer of operations?

MR. SIEGEL: Objection. Do we want to go through that all over again?

JUDGE STONE: Well, in view of this line of questioning, I'll allow it. Go ahead.

Overruled.

THE WITNESS: As I've testified previously, Mr. Zeman, a transfer of operations is one where we remove an operation that's being performed in one plant, move it to another plant. It's no longer performed in the original plant. Employees are transferred, and the transfer would have some impact on the employees who were previously doing it.

Q (By Mr. Zeman) In that situation you say it would go through your office?

A Definitely.

Q But the other examples I gave you would not, would they?

A Can I hear them again?

Q Like if steel were cut off in the Standard Plant, and then sent down to one of the four satellite plants to be [228] further processed, that wouldn't go through your office?

A No. I suspect not. Not each occurrence.

Q So, you wouldn't know from your records in your office, your information flowing to your office, you wouldn't know about every situation of that sort?

A I think it would be very difficult for me to have complete knowledge of all of that. Yes.

Q And the same would be true, wouldn't it, Mr. Milligan, if on every occasion that, say, a product had certain operations performed on it at the Standard Plant, and then was sent out to the satellite plant to have further operations performed, you wouldn't know about that from any records going through—any information going through your office?

A I wouldn't know about it on a—every time it occurred, although I think that I would have known, in general, that some of it might be done.

Q And isn't that the reason, for situations like that, that you wrote into the letter "to your knowledge"?

A As I say, I'm not infallible, Mr. Zeman. That's why I used the term.

Q To cover situations where you might not have been informed. Isn't that right?

A Not aware of, perhaps.

Q Now, before you wrote the letter which is General Counsel's Exhibit 8, did you check any records in other [229] departments, other than a personnel department—you're part of the personnel department, aren't you?

A Industrial relations.

Q Did you check, before you wrote that letter, General Counsel's Exhibit 8, any records, other records of the company in Torrington, or in the satellite plants, to see if some of the situations that the union was asking about had occurred, before you wrote that there weren't any such occurrences?

A Well, no. You see, at that time we were looking at your letter, or the union's letter—

Q Would you like to see it? Just a minute—it's General Counsel's Exhibit 4?

A (Pause.)

At that time we were looking at that letter, and that request for information with the thought that what you were talking about was transfers of operations. We had made no transfers of operations; it was unnecessary for me to check further, because I knew we hadn't.

Q All right. So, in other words, you didn't look at any records of these other situations it asked you about, because the way you defined transfers of operations, you didn't think you should furnish any of that kind of information.

Is that correct?

[230] A That's correct.

Q So, you just didn't examine records, other records that might have been available, because you didn't think that legally you were obliged to? Isn't that it?

A I knew we had transferred no operations.

Q And you were going to confine your answer to your definition of transfer of operations?

A Well, of course we were looking at it in that light.

Q So, then, you didn't look for any other situations that the company felt didn't apply? Isn't that right?

A Would you say that again?

Q Yes. You were going to confine your answer to the company's definition that you've given us here several times this morning of transfer of operations. Isn't that right?

A Well, of course, Mr. Zeman, our definition, I suppose, is what it's all about today; and naturally we looked at it that way.

Q So, even though there were other records available about material transfers and operations being performed partially in the Standard Plant and partially—there are such records, aren't there? The company keeps records of material usage, doesn't it?

A I assume we do. Yes.

Q And it keeps records of what operation is performed on a product at the Standard Plant; what operation is performed [231] on that product in one of the satellite plants?

A I assume we do. Yes.

Q Some of those records would be in the Standard Plant, wouldn't they?

A They could be.

Q And some of them might be in the satellite plants?

A I suppose so.

Q But anything that was done partially at the Standard Plant and partially in the satellite plant, there'd be a record of it in the Standard Plant, wouldn't there?

A I guess so. Yes.

Q And the company has a cost accounting department? Right? Cost control department?

A Yes, we do.

Q And the company has a production control department?

A Oh, yes.

Q And the company has a department that keeps track of materials, and so forth?

A Yeah. I don't know what we would call that, but I assume somebody does.

Q None of those departments are part of the industrial relations department?

A No, sir.

Q And you didn't go to those departments to look at their records at all, before you wrote General Counsel's Exhibit 8?

[232] A No, sir.

Q Now, you've made a statement before, Mr. Milligan, that any situation where an operation is done partially in the Standard Plant and partially in another plant—I'll rephrase my question.

Did you make the statement before that when an operation is done partially on a product in the Standard Plant and partially in one of the satellite plants—did you make the statement that all such operations would have to be cleared through industrial relations?

A No, sir.

Q As a matter of fact, Mr. Milligan, your industrial relations has nothing to do with actual production of products, does it?

A Oh, no. Of course not.

Q And in your department you have no production records, do you?

A None that I'm aware of. No.

Q And you don't have any materials records?

A No, sir.

Q You don't have any cost accounting people in your department?

A No, we don't.

Q Or production control?

A No, sir. We have industrial relations people.

[233] Q That's all?

A (Nodding head.)

Q What records, Mr. Milligan, are kept in industrial relations?

A What records?

Q Yes?

A Oh, we keep a variety of records. Principally and almost exclusively records concerning employees of the company.

Q Now, does industrial relations include within it the personnel department of the company in Torrington?

A Yes, it does.

Q And you get records—I believe in your testimony you stated that you get records of transfer of employees. Is that correct?

A Any status change involving an employee.

Q Any status change involving an employee you have?

A That's right.

Q Would that include a status if a person were re-assigned, say worked in the Standard Plant in Torrington, down to one of the satellite plants?

A Oh, yes.

Q It would?

A Mmhmm.

Q So, your records are all about employees as people, as [234] people, as individuals? Right?

A Yes, sir.

Q And you don't have any records about work being performed by these employees, except that you'd have records on what job classifications they were classified in, departments and so forth. Isn't that right?

A Where they work.

Q Where they work?

A Job classification, department.

Q Now, what is the chain of command in industrial relations? To whom do you report?

A Who do I report to?

Q Yes?

A The director of industrial relations.

Q What's his name?

A Mr. Palker—Joseph Palker.

Q Now, who are your immediate subordinates in the industrial relations department?

MR. SIEGEL: Objection. What's the relevancy of this?

MR. ZEMAN: It's very relevant. I want to show the chain of command in industrial relations, and show whether or not it's separate from the chain of command in other functions of the company.

MR. SIEGEL: But what's the relevancy of that to the case, to the issue?

[235] MR. ZEMAN: You'll find out, Mr. Siegel.

JUDGE STONE: Overruled. I'll allow it.

MR. SIEGEL: The pole is in the water again, Judge Stone.

THE WITNESS: Are you asking now, or at the time of this letter?

Q (By Mr. Zeman) At the time of the letter, General Counsel's Exhibit 8?

A Well, Ms. Brennan is on my staff.

Q Is she here?

A Yes, she is.

Q What's her title?

A She's currently the assistant manager of employee and labor relations.

Q Who else is on your staff?

A Directly working for me, no one. Except my secretary.

Q Do you have a director of personnel?

A No, sir.

Q What's Mr. William Sullivan's position with the company?

A He's manager of employee relations.

Q Could you tell the difference between his position and yours? He's not in the industrial relations department?

A Yes, he is.

Q What's his function?

[236] A (No response.)

Q What are his duties, compared to yours?

A Oh. Well, I've described my duties, which are essentially labor relations.

MR. SIEGEL: Judge Stone, I'm going to object at this point, and ask that there be another showing of relevancy. I mean, where are we going with all this?

JUDGE STONE: Yes. What are you getting at?

MR. ZEMAN: Well, I want to get into the record a very clear picture, your Honor, of the interrelationship or isolation of the industrial relations and personnel functions of this company from the operating functions of the company, with respect to production, products, and material.

JUDGE STONE: Well, hasn't he already testified that he has records, he didn't see any production records, so forth?

MR. ZEMAN: I think I'm entitled to show—it's not going to take me very long.

JUDGE STONE: Well, I don't want to have an R case here. I'll allow a couple more questions.

MR. ZEMAN: Okay. I'm not going to make it an R case, but I think if he could answer this question and one more we would finish this.

JUDGE STONE: All right.

THE WITNESS: Okay. What was the question?

[237] Q (By Mr. Zeman) The question is what does Mr. Sullivan do? You know, William Sullivan, the man we all know?

A Okay. Mr. Sullivan is responsible for the equal employment opportunity coordinating for the entire corporation. He essentially functions, I guess you'd say, as an office manager; gets involved in safety reporting to him, a variety of other functions.

Q Okay. Now, who's below him in his department? Does he have any assistant, or anything, like you have?

A No. He has Ms. Brennan. She assists both of us. And beyond that, it would go into employment, safety, a variety of functions.

Q That he handles?

A That would report to him.

Q The employment office and so forth?

A Mhmm.

Q Now, he reports—does he report to you or does he report to Mr. Palker?

A He reports to Mr. Palker.

Q To whom does Mr. Palker report?

A A vice-president of the company.

Q Now, your department and Mr. Sullivan's—the whole department, including you and Mr. Sullivan and Ms. Brennan's functions, and the employment office—that's all really under Mr. Palker?

[238] A Yes, sir.

Q Who reports to a vice-president?

A Yes.

Q And except for information you get on what happens to employees, there's no functional interrelationship or connection in any way between your department and those departments of the company that deal with production, producing of products, processing of materials, and so forth?

MR. SIEGEL: May I hear the question? There's no connection between his department?

Q (By Mr. Zeman) You don't have anything to do with those departments, except that you get information from them about what happens to employees?

A Well, of course, we have something to do with it, Mr. Zeman.

Q What do you have to do with them?

A The employees that you're talking about work for these people.

Q They work for these people?

A And anything involving employee labor relations, the whole gamut of these things involving people. Sure, we work with all of the operating departments on a constant, daily basis.

Q And you get your information from those departments with respect to their functions, anything that goes on down [239] there?

A Yes.

Q And you keep records? For example, if an employee's production wasn't up to scratch, it might come to your attention?

MR. SIEGEL: Objection. What has that got to do with the case, Judge Stone?

MR. ZEMAN: May I not be interrupted all the time?

MR. SIEGEL: He said one or two questions.

MR. ZEMAN: I'm on something else now.

JUDGE STONE: Overruled.

Go ahead.

MR. SIEGEL: You're on to nothing.

THE WITNESS: I'm sorry. I don't think you'd finished—

MR. ZEMAN: Your Honor, could I have some.

MR. SIEGEL: I'm sorry. I withdraw the remark.

Q (By Mr. Zeman) If, for example, an employee's production was—it was alleged that an employee's production wasn't up to par, and an argument came up or a grievance came up between the union and the company, the records with respect to that employee's production would be down in the production department under somebody else's jurisdiction, not yours.

Isn't that right?

A They would come under my jurisdiction.

Q You'd have access, but they'd be the records kept in the [240] normal course of business in that department?

A That's correct.

Q Now, Mr. Franculli testified about a Chrysler Sprague rod. Do you remember hearing that testimony?

A Yes.

Q And, as I recollect that testimony, Mr. Franculli testified that that Sprague rod, in a period that he testified about, had been—some work had been done on it at the Standard plant, and then it had gone down to Thomaston for some work, and then come back to the Standard Plant.

Do you remember hearing that?

A Yes.

Q Now, where would the record of that sort of thing be kept? It wouldn't be kept in your department, would it?

A No.

Q Where would it be kept?

A I'm not sure I know what kind of records you're talking about.

Q There'd be some record kept of something like that happening? I mean, you'd find it somewhere in the company's, wouldn't you?

A Sure. Obviously there would be some records.

Q But, whatever those records were, they weren't records that you had in your department?

A No. We wouldn't have those.

[241] Q And before writing General Counsel's Exhibit 8 you didn't check such records?

A I was aware of that job, the Chrysler job, when I wrote that.

Q Well, then, why did you say, if you were aware of it, that—you say in the first paragraph, "As we have repeatedly told you since the 1968 Swaging Department move, there has been no transfer of operations or interchange of production or maintenance employees between any of these plants and the Standard Plant," if you knew about that?

A Because that did not represent a transfer of operations.

Q In your definition?

A Or employees. In fact, it's my understanding that the work that's been performed on the job you're mentioning has never been performed in the Standard Plant; that work which is being done at the other facilities. So I think that my answer is perfectly accurate.

Q What it comes down to is this, Mr. Milligan, that there could have been dozens of situations, such as the Chrysler Sprague rod, which you might have known about or might not have know about, which would have been, whatever they were, in company records; but, in answering General Counsel's Exhibit 4, the union letter of June 27, 1974, you would have written General Counsel's Exhibit 8 the same way, because you screened out, when you wrote that answer, anything which [242] didn't meet the company's definition of a transfer of operations. Isn't that right?

A We looked for those things that met our definition, obviously.

Q And that's all—in your letter that's all you referred to. Isn't that right?

A I would say so. Yes, of course.

JUDGE STONE: Do you have any other questions?

MR. ZEMAN: Could I have a moment?

JUDGE STONE: Yes.

(Pause.)

Q (By Mr. Zeman) Now, I'm showing you, Mr. Milligan, General Counsel's Exhibit 4 and General Counsel's Exhibit 8 (showing documents to witness)?

A Yes, sir.

Q Do you want to look those two over again? I know you've seen them before, but I want to ask you a question or so about both of them, so if you'd like to take a minute to reread either one of them, why—

A Well, why don't you ask me the question, and I'll see if it's necessary.

Q All right.

It's clear, isn't it, Mr. Milligan, if you compare General Counsel's Exhibit 4 to General Counsel's Exhibit 8, that there are questions on General Counsel's Exhibit 4 that [243] are not answered at all by General Counsel's Exhibit 8, aren't there?

A Yes.

Q And it's clear, isn't it, that Question 1 on General Counsel's Exhibit 4 is not answered in General Counsel's Exhibit 8?

MR. SIEGEL: Objection. Judge Stone, are we going to go back into this? I thought we settled this yesterday, and you ruled on it about five times.

JUDGE STONE: The question yesterday was what was the answer to it. Now all he's asking is whether or not it was answered. I would allow that.

Or, if counsel wants to—

MR. SIEGEL: I'm willing to state on the record which questions have been answered, and which have not.

JUDGE STONE: Okay. That might solve the whole—

MR. SIEGEL: There's no secret, no mystery. I'll state it right now.

MR. FLYNN: I'll accept that.

MR. ZEMAN: May we go off the record?

JUDGE STONE: Off the record.

(Discussion off the record.)

JUDGE STONE: On the record.

It may be good to have a statement of the parties, to stipulate what has been answered.

[244] MR. ZEMAN: We'll have a problem with a stipulation, your Honor. The position of the Charging Party, and I think that of the General Counsel, is that no question has been answered.

JUDGE STONE: Let me help you out, gentlemen.

As to number 1, is there any contention that it was answered in the response to the letter?

MR. SIEGEL: No.

As to number 1, the company has declined to answer the question on the legal grounds asserted in this case.

Number 2, the company is not required, by action of the General Counsel, to answer that question; and it is not being pressed in the complaint.

JUDGE STONE: Number 3?

MR. SIEGEL: The company has declined to answer that question on the legal grounds asserted in this case.

JUDGE STONE: Number 4?

MR. SIEGEL: That question was fully answered by Mr. Milligan in his letter of November 25th, 1974.

JUDGE STONE: Number 5?

MR. SIEGEL: That question was fully answered by Mr. Milligan in his letter of November 25th, 1974.

JUDGE STONE: Number 6?

MR. SIEGEL: The company is not required to answer that question on the legal basis asserted in this case.

[245] JUDGE STONE: All right.

Number 7?

MR. SIEGEL: The company is not required to answer that question on the legal basis asserted in this case.

JUDGE STONE: Number 8?

MR. SIEGEL: The company is not required to answer that question on the legal basis asserted in this case.

JUDGE STONE: Number 9?

MR. SIEGEL: That question was fully answered by Mr. Milligan in his letter of November 25th, 1974.

JUDGE STONE: Number 10?

MR. SIEGEL: That question was fully answered by Mr. Milligan in his letter of November 25th, 1974.

JUDGE STONE: All right.

Numbers 11, 12, 13 and 14 are not in issue. Right?

MR. SIEGEL: Are not in issue. The company has not been required to answer those questions.

JUDGE STONE: Now, to make it further clear, where you've said not required to answer, there was no answer?

MR. SIEGEL: The company has declined to answer on the basis that it is under no legal obligation to do so, and accordingly declines to answer.

JUDGE STONE: Okay. I'm just saying that it's clear that there wasn't an answer. It's not a question that you're not required to answer, there was no answer.

[246] MR. ZEMAN: Just so I'm clear, your Honor, do I understand now that there's an admission on the record by counsel for the company, which of course is binding on the company, that the company has not answered, in General Counsel's Exhibit2, questions 1, 3, 6, 7, and 8?

JUDGE STONE: I would think that would be correct.

MR. SIEGEL: I count them the same way.

MR. ZEMAN: And Mr. Siegel is contending, although the General Counsel and the Charging Party disagree, that—for the company—that 4, 5, 9 and 10 were answered. And of course, as to those, the Charging Party, and I guess General Counsel both—is that correct, Mr. Flynn?

MR. FLYNN: Correct.

MR. ZEMAN: —claim that those aren't answered.

JUDGE STONE: All right.

MR. ZEMAN: May we take a recess now?

JUDGE STONE: All right. We'll take five minutes.

(A short recess was taken.)

JUDGE STONE: Back on the record.

Q (By Mr. Zeman) Now, Mr. Milligan, you have been at the Torrington Company for how long now?

A Since September of 1966, a little short of nine years.

Q When you came there did you find Mr. Franculli functioning as an official of the union?

A I believe he was chairman of the Standard Plant.

[247] Q Since that time you and he meet together frequently don't you?

A Oh, yes.

Q On contract matters, grievances, arbitrations?

A Yes.

Q Any matters that come up under the contract?

A (Nodding head.)

Q Is that right?

A That's right.

Q And it's also true, isn't it, that if Mr. Franculli—something has been called to his attention, about something going on in the plant that would affect the contract, if he wants to call it to your attention, you're willing to see him and sit down and talk to him, aren't you?

A Yes.

Q And he does that from time to time, doesn't he?

A Yes, he does.

Q And he has done it during '73, '74, '75 period?

A Has he done what?

Q Come in to see you, and said, "Look, I've got some information for you! I've got a complaint. It's not a formal grievance yet, but I want to call something to your attention"?

A Yeah. I would say he has.

Q Now, isn't it true, Mr. Milligan, that on several [248] occasions—let's take the '73-'74 period, and the beginning of '75, isn't it true that on some occasions Mr. Franculli has come to you with a complaint about something that's going on in the shop; and it's something that he called to your attention, that you hadn't know about previously?

A I would think that's happened. Yes.

Q And isn't it true on some occasions you said to him, "Gee," you said, "nobody tells me anything about these things," or words to that effect?

A I don't remember exactly. I suppose I might have said something like that.

MR. ZEMAN: That's all. That's all I have.

JUDGE STONE: Do you have any questions?

MR. SIEGEL: Just a couple.

### CROSS EXAMINATION

Q (By Mr. Siegel) Number one, do any transfers of employees to other plants of the Torrington Company, as a result of transfer operations, take place without your direct approval?

A No, sir.

Q Number two, are there any employees on layoff at the Standard Plant as a result of any transfer of operations by the Torrington Company?

A No, sir.

[249] Q Number three, at my request did you search the records, the grievance and arbitration records of the company under your control, for grievances or arbitration cases involving violations of Section 15.2 of this contract?

A Yes, I did; and I found none.

Q I'd like you to look at General Counsel's Exhibits 4 and 8 (showing documents to witness). When you wrote that answer and responded to General Counsel's Exhibit 4, which is the June 27th letter—

A Yes, sir.

Q Did you have that letter in front of you at that time?

A Did I have this (indicating) letter?

MR. ZEMAN: Could you say which?

Q (By Mr. Siegel) When you responded to that letter, did you have it with you at the time you wrote the response?

MR. ZEMAN: What exhibit number are we talking about?

Q (By Mr. Siegel) At the time of 8, did you have 4 with you?

A Yes.

Q Would you please read the first paragraph—first sentence, which is also the first paragraph of the June 27th letter, General Counsel's 4, to yourself, silently?

A (Pause.)

Yes, I've read it.

[250] Q What sections of the contract are mentioned therein?

A Article 1.

Q What is Article 1 in the contract?

A It's the recognition clause.

Q Any other sections mentioned?

A Article 3.

Q What is that in the contract?

A If I could look—

MR. FLYNN: Can't we let the contract speak for itself?

JUDGE STONE: We can, but I'll allow it.

MR. SIEGEL: I've been patient.

THE WITNESS: Can I look at the contract, just to refresh my memory?

(Pause.)

THE WITNESS: Article 3 is entitled checkoff. It's the union security clause, I guess you'd say.

Q (By Mr. Siegel) Any other articles mentioned in the first part of the letter?

A Yes. There are Article 15, Section 15.2.

Q When you responded to the letter on November 25th, did you respond within the purpose for which the information was requested, as set forth in the letter of June 27th, 1974?

MR. ZEMAN: I object to that, your Honor.

MR. SIEGEL: There have been many questions about his [251] answering letter.

MR. ZEMAN: If he's asked did he respond within certain concepts the company had, of definitions, I wouldn't object to that. But this question calls for a conclusion of law.

MR. SIEGEL: This calls for what the man did when he responded. There were many questions on direct. This is cross-examination now.

MR. ZEMAN: That has nothing to do with being proper. You can't ask him for a conclusion of law, which is reserved for the trier.

JUDGE STONE: I'm going to allow the question. I will make the determination, but the essence of his question is did he answer the letter—

MR. FLYNN: This is General Counsel's 8 we're talking about?

MR. SIEGEL: General Counsel's 8.

MR. ZEMAN: As answering 4, he's talking about.

JUDGE STONE: I'll allow it.

MR. FLYNN: Have we established, your Honor, before we proceed, that General Counsel's 8 is a reply to General Counsel's 4.

MR. SIEGEL: You established that ad nauseam, I thought, between 10:15 and 10:45 this morning.

MR. ZEMAN: It's the answer that the company wrote.

MR. SIEGEL: Judge Stone, I don't think there's any [252] question in your mind as to what Mr. Milligan's answers were between these two letters. I'm just

trying to bring out one other fact that I think is pertinent.

JUDGE STONE: I said you could go ahead. He can answer the question.

Q (By Mr. Siegel) You've testified here about the —about another transfer of operations, this one within the city of Torrington, that involved the Bonnie Mills facility, the rear wheel bearing operation?

A (Nodding head.)

Q Did you write the union, and specifically Mr. Franculli, about that transfer of operations?

A Yes, I did.

Q I show you what I would have referred to on the record as Respondent's Exhibit 3—

(The document above-referred to was marked Respondent's Exhibit No. 3 for identification.)

Q (By Mr. Siegel) —and I ask you, is that a copy of the letter that you wrote to Mr. Franculli, the shop chairman of Standard Plant, at the time of that transfer of operations?

A Yes, it is.

MR. SIEGEL: I offer that in evidence.

JUDGE STONE: Any objections?

MR. ZEMAN: May we have a moment to look at it, please?

(Pause.)

[253] MR. ZEMAN: Well, we have no question, your Honor—the Charging Party hasn't—about the authenticity of this letter, and I'm sure General Counsel would not have any to authenticity.

MR. FLYNN: I have no objection.

MR. ZEMAN: I don't know what relevance it has, but this letter was sent. It is a copy of a letter sent and received.

MR. SIEGEL: We'll point out the relevance in the brief, your Honor.

MR. ZEMAN: Could we have for the record, stated though, the purpose for which it's being offered?

JUDGE STONE: If you'd like.

MR. SIEGEL: I'd be glad to. I think that the purpose is very obvious, that the company is offering this to show that in those situations in which there has been, within the meaning of 15.2, a transfer of operations, the company has taken all of the steps required of it under the contract, and that it has in fact furnished full and complete information to the union.

This is a case of good faith. This is an 8(5) charge. Good faith becomes important, and I believe that this establishes the good faith of the company.

MR. ZEMAN: Well, I object to it, if it's offered for that purpose. I object.

[254] MR. SIEGEL: I think it's appropriate.

JUDGE STONE: I'm not sure you're correct on that.

MR. SIEGEL: I'd like to argue that point in the brief.

JUDGE STONE: I'm not sure you're correct. I think the question here is whether the information that was requested was relevant and necessary within the scope of what the facts would show.

MR. SIEGEL: This goes to that point, that here is a situation—

JUDGE STONE: I will receive it. I'm just saying that I'm not sure that the good faith question—

MR. SIEGEL: I'll try to persuade you in the brief.

JUDGE STONE: All right.

MR. ZEMAN: You're overruling my objection, your Honor?

JUDGE STONE: Yes.

It's received.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 3 for identification, was received in evidence.)

Q (By Mr. Siegel) Mr. Milligan, you've been involved in industrial relations for corporations since what—1965, 1966?

A For the Torrington Company.

Q Do you remember—you've heard some testimony about the Waterbury division?

[255] A Yes, sir.

Q Has the UAW ever filed a petition, a representation petition for an election at the Waterbury division?

A No, sir. They have not.

Q Has any other union ever filed a representation petition for an election at the Waterbury division?

A Yes, they have.

MR. ZEMAN: Your Honor, I object.

MR. FLYNN: Objection, your Honor.

MR. ZEMAN: I have an objection. Mr. Siegel went so fast, I'd like to make it now, and move that the question and answer be stricken. This isn't a representation proceeding. So, I mean, what's the relevance of that?

This is a question of information to police and administer the contract, 15.2.

MR. FLYNN: The union here, your Honor, has asked for information, which it believes is necessary for the administration of the contract.

MR. SIEGEL: One section of it.

MR. FLYNN: I fail to see what relevance a possible election at the Waterbury plant would have on this matter.

JUDGE STONE: Well, I may have a hard time seeing it, but you've got 1-UC-55 in the record. I would allow the question.

THE WITNESS: Yes. The answer to the question is yes. [256] The Teamsters, International Brotherhood of Teamsters, petitioned for representation rights in the summer of 1970.

Q (By Mr. Siegel) And was an election conducted by the National Labor Relations Board, Boston region, at that plant?

A Yes, sir.

Q And I show you what I would have referred to in the record as Respondent's Exhibits 4(a) and 4(b)—

(The documents above-referred to were marked Respondent's Exhibits Nos. 4(a) and 4(b), respectively, for identification.)

Q (By Mr. Siegel) —and ask you if you could please identify them for us?

MR. FLYNN: Your Honor, I reinstitute my objection, as to the materiality.

JUDGE STONE: Let's wait and see.

Q (By Mr. Siegel) Mr. Milligan, are those the documents that the company received in connection with that election with the Teamsters?

A Yes, sir. They are.

MR. SIEGEL: I offer them in evidence.

MR. FLYNN: Your Honor, objection as to their receipt. These employees are not even employees of the Standard Plant. They're employees of Waterbury. They have no relationship at that time, or even at this time, and especially with regard to the question we're trying to litigate in this [257] hearing. There's no relevance at all.

JUDGE STONE: Considering some of the evidence that's gone in, I'm going to receive it.

(The documents above-referred to, heretofore marked Respondent's Exhibits Nos. 4(a) and 4(b), respectively, for identification, were received in evidence.)

MR. SIEGEL: Respondent's 4(a) would be the tally of ballots; 4(b) would be the results.

JUDGE STONE: And they're with reference to 1-RC-11,151; and the tally of ballots shows the date issued August 12th, 1970. And the certification of results shows the date of August 21st, 1970.

MR. ZEMAN: May the record also show, your Honor, with respect to these exhibits, especially Respondent's Exhibit 4(b), that there's no union certified as a result of this election.

MR. SIEGEL: That's right.

MR. FLYNN: I'd also like to point out, your Honor, that this is not a matter involving Section 15.2. This is a straight representation election, which does not arise by virtue of the contract between the Charging Party here and the Respondent.

JUDGE STONE: All right. This can be argued in the briefs.

Q (By Mr. Siegel) Mr. Milligan, did the UAW participate [258] in that election?

MR. ZEMAN: Objection.

THE WITNESS: No, they did not.

JUDGE STONE: Overruled.

Q (By Mr. Siegel) Did they know about that election?

A Of course.

MR. ZEMAN: I object to that. What's the probative value of that in this case?

JUDGE STONE: I'll allow it.

Q (By Mr. Siegel) What's the answer?

A Of course they did. It was general knowledge. It was in the paper, I believe.

MR. ZEMAN: I move the answer be stricken, unless he knows of his own knowledge.

JUDGE STONE: I'll strike the answer at this point.

MR. SIEGEL: Let me ask another question.

Q (By Mr. Siegel) Can you relate any specific personal knowledge that you have that officials of Local 1645 were aware of this election, and expressed to you personally words that indicated that they were aware of the election?

A Oh, yes. Immediately prior to the election, while the election campaign was being conducted, and immediately prior to the election, I can remember, you know, occurrences where we would be meeting with the local in the Standard Plant, and there was some discussion. And I can remember, it seems [259] to me one of the committee members present offered to make a bet with me on the results of the election. So, it was quite obvious they knew about it.

MR. ZEMAN: I move that be stricken. It's not definite as to time and place, and whether or not the words that were said could bind the union.

MR. SIEGEL: He did say when it happened. He testified to that.

JUDGE STONE: All right. Overruled.

Q (By Mr. Siegel) Did you take the bet?

A No, sir.

MR. SIEGEL: I have no other questions.

JUDGE STONE: Do you have any other questions?

MR. FLYNN: Yes.

#### REDIRECT EXAMINATION

Q (By Mr. Flynn) Mr. Milligan, you stated that you know of no transfer of operations involving the Standard Plant which has caused the layoff of employees?

A That's right.

Q Does that mean that you don't know of any transfer of operations, or you don't know of any transfer of operations that involves the layoff of employees?

A One, I don't know of any transfer of operations. Two, I don't know of any transfer of operations that resulted in the layoff of employees.

[260] Q Because we are going by one of your several definitions of transfer of operations?

A (No response.)

Q Now, in regard to General Counsel's No. 8, were there any discussions—what was the reason why you wrote General Counsel's No. 8?

MR. SIEGEL: Objection.

JUDGE STONE: Overruled. I'll allow the question.

THE WITNESS: Which is No. 8?

Q (By Mr. Flynn) That's your November, 1974 answer?

A Why did I write it?

Q Yes?

A Well, we had had a request for information.

Q Isn't it true that you wrote that because of the union's case at the Board, and you thought that that might settle the case?

MR. SIEGEL: Objection, Judge Stone. I don't think that's proper.

JUDGE STONE: Overruled. I'll let him answer it.

THE WITNESS: I think my counsel felt that, as a result of conversation with people at the Board, that this was a satisfactory response to dispose of the case.

Q (By Mr. Flynn) So that this General Counsel's No. 8 was written, not as a result of the union's letter, but as a result of experience Respondent had with Region One of the [261] Board. Is that correct?

A It was written as a result of the advice of our counsel, that this was a proper response to this letter. And that was based on his discussions with the Board, which I was not party to.

MR. FLYNN: Okay. I'll let it stand there?

\* \* \* \*

## **PART D**

[4]

## PROCEEDINGS

(10:35 a.m.)

JUDGE STONE: The trial is in order.

The case docketed for trial is The Torrington Company, Standard Plant, and Local 1645, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, Case No. 1-CA-10,137.

I am Judge Jerry B. Stone, Administrative Law Judge.

I understand that all of the parties have been informed of the procedures at formal hearings by service of a copy of the statement of standard procedures, and that additional copies are available from the General Counsel if you need them.

Will counsel and other representatives for the parties please state your appearances and addresses for the record?

For the General Counsel?

MR. FLYNN: Thomas J. Flynn, Region Number One, 15 New Chardon Street, Boston, Massachusetts.

JUDGE STONE: For the Charging Party?

MR. ZEMAN: For the Charging Party, Attorney William S. Zeman, 18 North Main Street, West Hartford, Connecticut 06107.

JUDGE STONE: For the Respondent?

MR. SIEGEL: Siegel, O'Connor & Kainen, Attorneys, by Jay S. Siegel, 60 Washington Street, Hartford, Connecticut [5] 06106.

\* \* \*

[16] MR. FLYNN: Your Honor, on behalf of the General Counsel I have no problem in agreeing with that stipulation. There is—I'd like to amplify my position a bit. While we are talking about a de lege representation for those plants, there may exist at this point a de facto position, wherein the union does have the necessary elements for recognition. That is one of the reasons why we are here requesting that the company give us that information.

[17] So that, while I can agree to the stipulation that de lege the union does not represent, does not have the bargaining rights for the employees at this time at those plants, I cannot say de facto that it exists.

With that—

MR. ZEMAN: Well, may I be heard for the Charging Party?

JUDGE STONE: All right.

MR. ZEMAN: It's the position of Charging Party, your Honor, that we will certainly stipulate that at the present time that the company is refusing to recognize the Charging Party as a bargaining agent of any of the four plants in question; but, we don't know, at this point, whether or not the company is in violation of the Act, because we can't get the information to find out whether or not under Section 15.2 we're entitled to be the bargaining agent at any one or all of those plants.

\* \* \* \*

[19] MR. FLYNN: The information is relevant for the union to determine its rights under the collective bargaining agreement, which may go to, depending upon the information received by the union. Because, at this point, the union is operating in a vacuum. It does not know what's going on in regard to the so-called bargaining unit. It does not know precisely what work is being transferred out of the unit; whether or not employees are being transferred; and there's a question as to what transfer means. It's just not in possession of this information, and it has requested this information.

And, until it receives this information, and is able to look at it, the union does not know whether or not it wants to seek recognition for these other plants. It must have this information in order to make a determination.

You will notice, your Honor, in reading that contract, I believe in Section 7, of that same article, that the parties have agreed that any problem concerning Article 15

would be submitted to the arbitration procedure—to the grievance procedure, ending in arbitration.

\* \* \*

[21] MR. FLYNN: My position, your Honor, is that, as Mr. Siegel states, transfer of work should not be submitted to arbitration or the grievance machinery. But, once the work has been transferred, the information needed to determine whether or not the union should follow that work or follow those people, that certainly could be subject to the grievance procedure, and to arbitration.

Fundamentally—I'm talking about the information now, I'm not talking about the obtaining of bargaining rights—once the transfer has been made, the union is entitled, in order to administer that contract under 15.2, it's entitled to the information. But, we don't know whether or not work has been transferred. This is what we're asking.

\* \* \*

[22] MR. ZEMAN: As far as the Charging Party is concerned, your Honor, this is the way we view the case. You'll notice in reviewing General Counsel's Exhibits 3(a), 3(b), and 3(c) there was an earlier charge, which was withdrawn without prejudice. That charge dealt with the alleged refusal of the company to bargain with the union concerning the employees in the plants in question, the other plants in question.

Now, as we'll bring out through testimony, the reason that charge was withdrawn was that we didn't have information to go forward. So, it was withdrawn without prejudice. Then, after that charge was withdrawn without prejudice, the union attempted to get information about the situation.

Now, when you look at Section 15.2, I don't think it's [23] a question here of what's subject of arbitration and what isn't, because the right to information doesn't de-

pend on whether or not your contract permits you or doesn't permit you to go to arbitration, on a particular point.

The right to information is basic under the rulings of the Board and the courts, of the right of the union as a collective bargaining agent to have information that's necessary to police and administer the contract.

Now, what we're trying to find out, and haven't been able to find out, is whether or not any of the things that are set forth in 15.2 have happened with respect to these plants. So that—because the last sentence of Section 15.2, as your Honor will notice, that if certain things do happen, pursuant to the first part of Section 15.2, then the company agrees to recognize Local Union 1645 as a bargaining representative for such employees, if it is not illegal to do so.

We are in no position to know whether or not we're entitled to recognition pursuant to the last sentence of Section 15.2, until we have information, so that we know whether or not the things that would entitle us to recognition have or have not happened.

Now, the company counsel stated here this morning that that information has been furnished. But, the record will show that it hasn't been furnished. And I think that the [24] evidence that will be produced this morning before your Honor will show that the question—the information hasn't been furnished.

And the violation—as the Charging Party sees it—of the Act is that refusal to furnish this information is a per se violation, because without we can't—we're flying blind, we're in no position to intelligently police or administer the contract, especially with reference to Section 15.2.

\* \* \* \*

[25] ANGELO G. FRANCUCCI

[26] was called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

JUDGE STONE: State your name and address?

THE WITNESS: Angelo G. Franculli, 367 High Street, Torrington, Connecticut.

#### DIRECT EXAMINATION

Q (By Mr. Flynn) Mr. Franculli, you work for Torrington Company?

A Yes, I do.

Q How long have you worked there, and in what positions?

A I've worked at Standard Plant, Torrington Company, for approximately 26 years. And I've held various positions throughout that time in our union. I'm presently, and have been for the past four years, the president of the union.

Q How long have you been a member of the union?

A Ever since I went to work in the plant in 1949.

\* \* \* \*

[27] Q Have you served on the bargaining committee for the union?

A Ever since 1958.

Q Are you familiar with the contract known here as General Counsel's Exhibit No. 2?

A Yes, I am.

Q Are you familiar with Article 15 of that contract?

A Yes, I am.

Q Specifically, are you familiar with Article 15, Section 2 of that contract?

A Yes.

Q Could you tell us when that particular article was negotiated between the company and the union?

A It became effective January 20th, 1964, after a 17 week strike. It was during that period of time, from September of 1963 to January of 1964 that we bargained on the language that appears in the contract at the present time.

Q The language of Section 15.2?

A Yes.

Q Would you tell us the circumstances that were present [28] when this particular article was negotiated?

A Well, the circumstances that were present were that for quite a few years, whenever we would attempt to increase our benefits or our wages, the company would continually imply that they would have to move out of town, or they would move out of town, or our demands were too high, statements of that sort.

And then, when we failed to come to agreement in September of 1963, and we went on strike, the company had continued to imply that they would leave town. So, as a result of those implications, we bargained for the language successfully, to try to protect our jobs as much as possible.

Q Have you recently requested information from the company regarding transfer of work and or employees from the Torrington Standard Plant elsewhere?

A Yes, we have.

Q I show you General Counsel's Exhibit No. 3 (showing document to witness), and ask you if remember this charge being processed at the National Labor Relations Board?

A Yes, I do.

Q Do you remember the withdrawal of that charge?

A Yes.

Q Did you speak with your attorney regarding the withdrawal of that charge?

A Yes.

[29] Q Could you tell me what the basis for the withdrawal of that charge was?

A The basis for our withdrawal was that evidently the Board didn't feel as though we had enough information. So, we withdrew it at that time, for that reason.

Q Subsequent to that time did you request information from the employer?

A Yes.

Q Did you request that information in a letter dated June 27, known as General Counsel's Exhibit No. 4 (showing document to witness)?

A Yes, I did.

\* \* \* \*

[33] MR. ZEMAN: The rule, the hearsay rule, as your Honor I'm sure knows, goes to whether or not hearsay is admissible or is not admissible to prove the truth of the matter, unless it should be admission against interest, or one of the exceptions. But, as I understand the General Counsel's position, and the Charging Party's position, it is that the question asked by the General Counsel, which is the question I would ask if he weren't asking it, to the president of the union, as to what reports came to him in his normal course of business in his official capacity, about transfers.

Now these, in my opinion, in the opinion of the Charging Party, are admissible not for the truth of those [34] statements, but to show what information was furnished to the president of the union by members of the union, concerning transfers. And I think it's positive evidence, because this evidence is to be considered by the trier in this case, by your Honor, as to whether or not the union had reasonable cause for requesting the information that's in dispute.

Now, if the union president is told by people in the plant that certain transfers were made, of employees or work, that in my opinion establishes probable cause. It doesn't prove the truth of it, but it's a basis for the

union asking the company as to whether or not certain things happened.

Now, if the company simply says to the union president, to the union, no; this didn't happen; yet he has information from people in the plant that it has happened, then that raises a question where the union has reasonable cause to ask the company for documentary evidence, and proof of the situation, not a mere sayso.

And as I understand—I'm not speaking for the General Counsel—I understand that this is the line of questioning at this point that General Counsel is pursuing. And I think it's admissible for that purpose.

JUDGE STONE: Well, you've got evidence, apparently, that a request was made for certain information. You've got evidence, either from the letters, which will be argued, [35] and the parties can point out to me what they mean, that information was given or it wasn't given. I mean, that will be on that.

Now, let's assume the company says "we have made no transfers." Now, if they have made no transfers, and you requested how many people were transferred, that would be a response to that question. If they have made transfers, in order for you to prove that they haven't complied with furnishing the information, it seems to me that you're going to have to show that there were in fact transfers; not that he believes that there are transfers; but you're going to have to—in order to prove that the company hadn't furnished the information requested, in view of the fact that they have said "we haven't." I think you're going to have to show that there transfers.

MR. FLYNN: Well, in other words your Honor, what you're asking us to prove is that we have the information that we are requesting from management. And the whole thrust of this case is that we don't have the information. That's why we've requested—

\* \* \* \*

[36] Q (By Mr. Flynn) Do you know a Nick Caputi?

A Yes, I do.

Q Would you tell me who he is?

A He's the superintendent of the department I work in, at the Standard Plant, machinery.

Q Do you have conversations with him?

A Yes, I do.

Q Do you have any conversations with him regarding the transfer of work?

A Yes, I do.

\* \* \* \*

[38] Q (By Mr. Flynn) What were the conversations that you had with Mr. Caputi?

A I discussed with Mr. Caputi, on a number of occasions recently, about work leaving the Standard Plant, to be performed at Vaill's at Waterbury. And on some occasions he took the position that the work leaving the plant was not—he did not consider it subcontracting of work, because the company owned the plant. Here, when we were put on 40 hours, him and Mr. Milligan asked me up in the office, around that time.

Mr. Milligan is labor relations manager, and indicated to me that we were going to have reduce the people in the department to 40 hours. And he showed me how much work that was presently being subcontracted, because we have a clause in the contract that provides that we would work 45 hours, you know, before the company sub-contracts work.

When we got downstairs Mr. Caputi also notified me that they were not going to send any more work down to Vaill's at this time; and he reiterated that, later, when the Excelsior [39] plant was shut down, because we have a number of skilled help in machinery down there, that were without work completely. Because I had indicated to him, you know—

JUDGE STONE: Excuse me a moment.

Is the Excelsior plant part of the Torrington Company?

MR. SIEGEL: I don't know why this witness is rambling. I move that part be stricken.

THE WITNESS: I'm not rambling. He asked me to tell about my discussions.

Q (By Mr. Flynn) When you mention a plant, will you tell the Judge where it is, and so on, because he does not know?

A The Excelsior plant is only a few hundred yards down the road. It's another one of our plants.

Q That is one of the Standard Plant complexes?

A Well, it's another one of our plants, under our local union. And in the past we've continually supplied work from one plant to the other, as far as machine trades work. Also from the Broad Street plant, which is another plant covered under our contract. And he indicated that because of the work situation at the present time that they were not going to send any more work.

Q He being?

A Mr. Caputi. They were not going to send any more work down to the Vaill plant.

Q The Vaill plant is where?

[40] A In Waterbury, approximately 26 miles from Torrington.

Q Do you represent those people?

A No, we do not.

And here, about three or four weeks ago, it was brought to my attention by Mr. Joseph Alibozak, who works on our Blanchard grinder, in the machine room in Standard Plant, it was brought to my attention that they'd taken some work from him, that was already alongside his machine for him to perform, and that they were bringing it down to Waterbury.

I went to see Mr. Caputi, with Mr. Alibozak, on that; and at that time he indicated that he didn't know

much about it, that he would get back to me. I waited a few days, or a week, approached him again on it; and he said, "Yes, we did send some work down there. We wanted to try to get it done in a hurry."

I said, "Well, could you tell me how much work it was, and what type of work it was?" He said, "I'll check with some people to try to get that information." And I asked him again this last Friday; he still did not have the information.

Now, in addition, I've spoken to him a number of times about our steel cutoff man in the machine room, that's continually been cutting off steel for Waterbury plant. And the work goes down, the steel goes down into our office, just a hundred feet down the aisle; and from there they [41] supply blueprints and other paper-work.

JUDGE STONE: When you testify they're cutting off steel for Waterbury plant, do you know yourself that it goes to the Waterbury plant?

THE WITNESS: I have copies of the requisitions indicating that it goes to Waterbury, sir.

And they're attached to blueprints, and what have you, with those materials. And a man comes up from Waterbury and picks it up practically every week.

Q (By Mr. Flynn) Did you discuss with Mr. Milligan or any other supervisor of the plant other matters regarding such type operations?

A I brought—

MR. SIEGEL: When is this, may I ask? We have no date on this. I know the last Caputi discussion was last Friday.

Now, one of the questions, Judge Stone, is that everything that's been testified here to is within the last couple of weeks, and predates the complaint, the charge, and everything else in this case. And I question whether or not it's appropriate, or should be stricken.

MR. FLYNN: Your Honor---

MR. SIEGEL: I mean these are all recent conversations, within the last couple of weeks. The complaint was issued seven weeks ago.

[42] JUDGE STONE: All right. Overruled.

Go ahead.

Q (By Mr. Flynn) Were there any other discussions with Mr. Milligan, or any other supervisor, regarding such type of work?

A Well, regarding the—

MR. SIEGEL: When?

THE WITNESS: Regarding that particular kind of work that I've just made reference to, I've spoken to Mr. Milligan a number of times in the past few years. I've spoken to Mr. Caputi a number of times in the past few years, and not just recently, on this work that's been leaving the Standard Plant machinery to go down to Waterbury.

As I said before, they did not appear on our monthly subcontracting list, because the company's position was that they didn't consider it to be subcontracting of work.

Q (By Mr. Flynn) Under the contract do you get a list of the work that's being subcontracted out by the company?

A Yes, we do.

Q How often do you get that list?

A Every month.

Q On those lists is there any work that's being done by any of the four locations under Torrington? Is any of that work put on this subcontracting list?

A No. It isn't.

[43] Q So, you have no knowledge of any? If there is subcontracting, you have no knowledge of it?

A That's correct.

Q That is, through those lists?

A (Nodding head.)

JUDGE STONE: Let me make a suggestion to both attorneys, that when you put a witness on, unless you tie in the dates and the conversations fairly precisely, I may not attach any weight to it.

MR. FLYNN: Well, your Honor, some of these conversations would defy dates, except generally. I will ask the witness to tell us at all times the general time when these conversations took place.

JUDGE STONE: I want the witness to testify as close as he can as to when something happened.

MR. FLYNN: All right.

Q (By Mr. Flynn) In regard to conversations with Mr. Milligan, would you please tell us when they occurred, regarding what you believe to be transfer of work—when they occurred, and when you had the conversations with him?

A Well, they occurred within the past two years, more or less in that period of time. And from time to time. I couldn't give you the specific dates, when I brought work going to Waterbury to his attention.

[44] Q Which work was this?

A This work that was cut off down in our machine room.

Q The steel cut off?

A Yes. Continually being cut off. As a matter of fact, in the machine room, the cutoff man had a sign there that says "For Waterbury", and underneath that rack he would put all the work for Waterbury; as he would also have another sign for New Home, which is another plant that Torrington Company owns out of state.

Q Did you see that sign?

A Yes. And underneath that sign, all the work he would cut off for New Home would be there, considerable amounts—you know, continually. And I spoke to Mr. Milligan about that. Sometimes he would say he would check into it. And one time he simply gave me

the response that they did not consider that subcontracting; that this question of work going there was mute, or something of that nature.

Q Mute or moot?

A Moot. I'm sorry.

Q Do you know the dates on which the company acquired the four companies that we are concerned with here—Waterbury, Thomaston, Bantam, and Morris, Connecticut locations?

A No, I don't.

\* \* \*

[46] Q (By Mr. Flynn) Are you aware of any people going from Torrington to any of these other locations?

A Yes, I am.

Q Can you tell me their names, please, if you can recall?

A Mr. David Hughes works in the research department of Standard Plant. During the period of time of 1963 to 1964 he went down on at least 16 occasions to work down at the Vaill plant in Waterbury. Along with him went Mr. John Dubiel. David Hughes is a tool-maker, skilled tradesman.

Q When did this occur?

A During 1963 and '64. Mr. Dubiel also has gone down there. He was an engineer from the research department.

JUDGE STONE: Let me ask one question.

Waterbury has been mentioned. Is this the Waterbury you were asking about when you inquired if he knew the dates that they were acquired?

MR. FLYNN: Waterbury, Thomaston—all four of them.

JUDGE STONE: Well, his testimony here apparently indicates that Waterbury was bound to have been acquired, or [47] owned, or something, before '63 and '64.

Is that the status of the others, or is there any question on it?

MR. FLYNN: I don't know, your Honor.

Do you know?

MR. SIEGEL: The witness is on the stand. Let him answer.

THE WITNESS: Well, Waterbury, I don't know the exact date. Approximately it was acquired, I think, around 1968. I know that was acquired sooner than the Thomaston Special Company.

Q (By Mr. Flynn) Do you know this for a fact, or is this just hearsay?

A Waterbury was acquired--the Vaill plant, because the company met with us and everything, when we interviewed the people to encourage them to go, to transfer from Torrington down to Waterbury. We had no such meetings when they purchased Thomaston Special. And I didn't get any reports about--

JUDGE STONE: My question was--the reason I asked is that you testified that in 1963 or 1964 Mr. Hughes went from Standard down to the Waterbury plant.

THE WITNESS: I'm sorry. I meant to say '73 and '74, sir.

Q (By Mr. Flynn) Any others?

[48] A Yes. Mr. Anthony Stolfi, a set up man from swaging department, has gone down to set up work at the Vaill plant. He was accompanied by a foreman, Mr. Walt Schroeder.

Another time--

JUDGE STONE: When was this?

THE WITNESS: Mr. Walt Schroeder--

JUDGE STONE: When were Stolfi and Schroeder--

THE WITNESS: This is in October, approximately October or November of 1974.

Another time that I brought to Mr. Milligan's attention was approximately five or six months ago. Mr.

Perdetto was observed taking tools from the swaging department, and brought those tools down. I asked Mr. Milligan—it was brought to my attention; I asked Mr. Milligan about it. He said he would check into it. Later on he responded that those tools were taken down—Mr. Perdetto took 'em down to the other plant in Waterbury to do some experimental work on the swaging of some parts; and they needed the tools for that reason.

Q (By Mr. Flynn) Can you remember any others?

A I know of other work that I investigated and saw the operation sheets, where work was on this Chrysler Sprague rod job; a job that was developed here in the Standard Plant, and was continued work here in the Standard Plant. It leaves the plant, the operation sheet shows—

[49] MR. SIEGEL: Does he know? Is he testifying of his own knowledge?

Q (By Mr. Flynn) Do you have any of these sheets with you?

A Yes, I do.

On this Chrysler Sprague rod job, I have here before me a copy of the operation sheet. As the work is routed through our plant, it shows on the operation sheet. And I spoke to the individual in charge of the department, up on the sixth floor of the Standard Plant, where this job is worked on, at one operation.

\* \* \* \*

[53] MR. ZEMAN: That General Counsel's Exhibit No. 11 for identification—is that a photocopy that you made yourself of an actual operation sheet taken from a pan of work?

[54] THE WITNESS: Yes, it is.

\* \* \* \*

[57] MR. ZEMAN: I have one question. May I ask a question?

JUDGE STONE: Yes.

Q (By Mr. Zeman) Mr. Franculli, you may have already stated this, but would you tell us the position that Mr. William G. Milligan holds with the company?

A Manager of labor relations.

Q Do you deal with him in collective bargaining matters for the union?

A Yes, I do.

Q Does he represent the company at negotiations and arbitrations, and other matters that the union's involved with?

A Yes.

Q Is he manager for all the plants that the union bargains for?

[58] A Yes.

\* \* \* \*

[61] AFTERNOON SESSION

\* \* \* \*

CROSS-EXAMINATION (Continued)

Q (By Mr. Siegel) By the way, you testified something about the machine shop in the Standard Plant. You work in that machine shop, don't you?

A Yes, I do.

Q That's where your job is?

A (Nodding head.)

Q You testified something about the machine shop going to a 40 hour work week?

A Correct.

\* \* \* \*

[62] Q And you're president of the union, but the union really is composed of three plants in Torrington—

the Standard Plant, the Excelsior Plant, and the Broad Street Plant. Isn't that true?

A Well, it's actually four plants; but they consider the Broad Street plant now to include the wire mill.

Q That's the plant that was constructed in the sixties, right next door to the Broad Street plant?

A Yes.

Q And it was eventually considered to be a part of the Broad Street plant?

A Yes.

JUDGE STONE: What was the fourth one? Excelsior and—

THE WITNESS: The wire mill.

JUDGE STONE: The wire mill, Broad Street—

THE WITNESS: Excelsior and Standard.

\* \* \* \*

[63] Q Is it part of your responsibility to file grievances on behalf of employees in the Standard Plant, and help stewards file grievances under the contract, where they think there's been a violation?

A Yes.

\* \* \* \*

[73] Q Well, now, you've testified that the reason—well, my notes show that you've testified that the reason the charge with withdrawn was because Boston—the Labor Board in Boston felt that there wasn't enough evidence.

Tell us, why did the union withdraw that charge?

A Well, the way I remember it, is—I think I had a conversation with our attorney; and he indicated to me that, you know, the Board was not going to issue the charge for lack of information. So, we were going to withdraw that, and therefore, you know, his advice was that we withdraw it without prejudice, and try to get the information.

\* \* \* \*

[87] MR. SIEGEL: You don't need 15.2 if it's a true accretion. As a matter of fact, that was the case with the wire mill, where there was another facility, right in the city of Torrington, Connecticut; and there was an accretion, there, and it was so found.

\* \* \* \*

[92] THE WITNESS: I don't know.

Q (By Mr. Spiegel) Can you name any Standard Plant employees, represented by you as shop chairman at the Standard Plant, the number one union official, that have been permanently transferred from the Standard Plant to Waterbury, Morris, Bantam or Thomaston, other than in connection with the swaging operations that were transferred in 1968?

MR. ZEMAN: I object to the question. He already [93] answered the previous question, and said he didn't know. So, there's need for the question.

MR. SIEGEL: This is cross-examination.

JUDGE STONE: This question was could he name any of them? It's about the same.

Can you or can you not?

THE WITNESS: I can't name anyone. One of the reasons why I can't is the company does not give us a list of any names of people they transfer.

\* \* \* \*

[114] JUDGE STONE: Call the witness back.

Let me ask you, before you go out there, Mr. Flynn—I want to ask you and the Charging Party. There's testimony about the—what Mr. Hughes did, and about the steel cutting. Are you asking me to draw an inference from such testimony that there was, in fact, a transfer of operations?

MR. FLYNN: We're asking you, your Honor, to draw the inference that there's reasonable belief on the part of the union to indicate that the company has not specifically answered their questions, and that the—

JUDGE STONE: I'll go one step further. I'm asking you, are you asking me to draw an inference from that that there was, in fact, transfer of operations?

MR. FLYNN: No.

MR. ZEMAN: What the Charging Party, your Honor—

MR. FLYNN: Because we don't know, either.

MR. ZEMAN: —is asking, that you draw an inference that the union has reasonable grounds for believing that such transfers may have been taking place; and, therefore, needs the information either—to tell whether or not that's actually true.

I would ask you, on behalf of the Charging Party, from [115] the evidence you have mentioned, your Honor, to draw an inference that the union wouldn't be fulfilling its statutory duty if it just accepted the letter of Mr. Milligan, which is General Counsel's Exhibit 8, and dropped it. I think that there they'd be neglecting their statutory duty to get the information they need to police the contract intelligently; because that evidence puts the union on notice that it's reasonably probable that there may have been some of these transfers.

MR. FLYNN: I think the witness has testified, your Honor, that he has spoken to the company about these various episodes which have occurred. Not that they have occurred, but that he's questioning whether or not they have occurred; and that he has not received a specific answer. This letter is no a specific answer. It's in the form of a demurrer—that's not the right word—

\* \* \* \*

[127] PHILOMENA CISOWSKI

was called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

JUDGE STONE: Would you state your name and address, please?

THE WITNESS: Philomena Cisowski, 119 New Litchfield Street, Torrington, Connecticut.

JUDGE STONE: Go ahead.

MR. FLYNN: All right.

[128] DIRECT EXAMINATION

Q (By Mr. Flynn) Ms. Cisowski, how long have you been in the employment of Torrington Manufacturing Company?

A Since December 26, 1945.

Q Have you occupied various positions in that company?

A In the company?

Q Yes, working in the plant?

A No. I'm just a press operator.

Q Are you a member of the union?

A Yes, I am.

Q Are you an official of the union?

A Yes. I'm recording secretary, since 1962.

Q Did you ever have any conversations—do you know a Rita Carlotto?

A Yes. She is my supervisor.

Q Did you ever have any conversations with her in regard to special products?

A Yes. About a week and a half ago.

\* \* \* \*

[130] Q (By Mr. Flynn) Would you tell us the circumstances of that conversation, what was said?

A May I state what took place?

Q Yes?

A In late fall I had to do a sample of 100 pieces of the precision bearing.

Q Was that in 1974?

A Yes. I don't remember the month. It was either October or November of '74. After I did the 100 pieces we were told—

Q By whom?

A By our supervisors—we were told that this was going to be a bearing that we would have to assemble, starting in April. On April 2nd of 1975, I noticed a component part of the precision bearing, and I thought, "Well, they've started to come through." I picked up the operation sheet, and I noticed that it was being sent to a vendor, the Thomaston Specialty Products Company.

A week and a half, or so, ago, I was in conversation with my forelady, and I asked her about the precision bearing. And all she answered was "It doesn't look good."

Q What did that mean?

A I don't know.

Q Now, when this work was sent out to the vendor, was this work, to your information, according to the word given [131] to you by the supervisors, to come back to the plant for assembly?

A Please repeat that?

Q Was this work going to come back to the plant for further operations?

A I don't know.

Q But this work that was—it was indicated that it was going to be performed in Torrington. Is that not true?

A Yes. When I did the sample lot.

\* \* \* \*

[133] CHANNING E. HARWOOD

was called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

JUDGE STONE: Have a seat, and state your name and address.

THE WITNESS: My name is Channing E. Harwood. I live at 145 Frederick Street, Torrington, Connecticut.

JUDGE STONE: All right?

[134] DIRECT EXAMINATION

Q (By Mr. Flynn) Mr. Harwood, would you state your position in the company for the record, please?

A I'm secretary and corporate counsel.

\* \* \* \*

[160] Q (By Mr. Flynn) Mr. Witness, what is your definition of a transfer of work, in your mind?

MR. SIEGEL: Objection. Transfer of work is not the language called for in 15.2. It says transfer of operations.

Q (By Mr. Flynn) Well, transfer of operations?

A My definition of transfer of operations has already been testified to here. It's precisely the instance that was put in the record, where we transferred the swaging operations to the plant we acquired in Waterbury. And then, when that happened, we met with the union and gave them all the information necessary for it; and talked about what employees would go. And those who wanted to go followed their [161] work.

And we also went into the legal issue, as to whether or not it was legal or illegal to recognize the union. In other words, I can't think of a more beautiful case of a transfer of operations, where we followed the one, two, three steps of the union. When we moved the swaging operations out of the Standard Plant, to a newly acquired plant, within 75 miles, we informed the union of it in advance. Number two, those employees who wanted to go were allowed to go. Number three, when they went, the question of recognition of the union came up. And we said, in our opinion, it is illegal to do so. Therefore, the not illegal bar is there. And then that went to a hearing, and it was—the company's opinion was confirmed.

Now, that is my definition of a transfer of operations.

Q In other words, in the Standard Plant, you were producing certain products, and you transferred the entire production of that product to another plant?

A It doesn't have to be an entire product; it could be exactly what the word says, an operation.

Q An operation?

A Right. To my knowledge, in any of the instances cited this morning, there has been no transfer of an operation.

Q Well, do you know whether or not the piston bearings, which one supervisor said were going to be produced in [162] Standard Plant, are being produced in one of these satellite operations?

A They may be, but the operation that's been performed in the Standard Plant is still performed there. It hasn't been transferred.

Q No, but the work that would have been there has been transferred. Is that not true?

A You're talking about work and transferring operations, and they're two different things. Where the company performs or from what plant the company may fill an order is entirely different from whether or not the company still has a grinding operation in the Standard Plant, still has a heat treat operation, still has an automatic screw operation in the Standard Plant. And we still have all the operations in the Standard Plant with the exception of those that we have met with the union on.

\* \* \* \*

[164] Q (By Mr. Flynn) They are operations. Do you know of any of these operations?

A I don't know of any operation that has been transferred out of the Standard Plant to a plant within 75 miles that we have not done everything the contract called for, which is discuss with the union that effect, notify them in advance, work with them on employees

who want to follow the operation, and recognize the union as bargaining agent if it is not illegal to do so.

I am not aware of any instance where such a thing has happened.

Q Would you give me one or two instances of where this has happened?

A Well, we gave—just finished with one. And there was [165] a second one, where we moved the rear wheel bearing operation from the Standard Plant to another facility in the Torrington City. We notified the union in advance of it; we talked with the union about the employees who would follow that transfer of that operation of the rear wheel bearing.

Employees went, and followed that; and since it was a situation where only Standard Plant people were going, and there weren't people already there, we felt that it would be entirely proper to recognize the union as the representative of the employees there. And we did so; and they are still representing employees at that—what we call the Bonnie Mill facility.

\* \* \* \*

[167] Q Were any of these piston bearings, which Mr. Siegel said was on an experimental basis, so-called—was that experimental piston bearing operation—did it cease at Standard Plant?

A I know of no operations performed in the Standard Plant, useable on a piston bearing, that are not still performed and have been transferred to another plant.

Q Well, you heard Ms. Cisowski's testimony?

A Well, you're—Ms. Cisowski was talking about a particular bearing. Now, there's an entirely different question as to whether or not we ever make that type of bearing again, or ever get an order for it; as distinguished from—Ms. Cisowski works on presses. Now, that operation is still being performed. We may never again make the bearing that was in that question. Or, we may

make it some other place. But, Ms. Cisowski's press operation is still being performed.

Q I'm asking about that piston bearing. It was made in Standard, wasn't it?

A Partly, yes; or 99 percent. As far as I know, if we get another order—

MR. SIEGEL: Excuse me. Is this on the experimental sample run you mean?

MR. FLYNN: What you called experimental.

MR. SIEGEL: She said it was a sample. It wasn't production; it was a sample.

THE WITNESS: I don't know whether we have ever made any [168] more or not.

Q (By Mr. Flynn) Is that work now being done somewhere else?

A I have no idea whether we have ever made that, whatever number that bearing has, again. But, I am aware that whatever operations performed in that Standard Plant, useable for that bearing, are still being performed in the Standard Plant. We may never get an order for that bearing again. Or, if we get it, we may— whoever, under our section, is entitled to decide where it's made, may decide it's going to be made some other place. But, the Standard Plant operation that Ms. Cisowski works on is still there.

Q All right. Suppose you decide it is going to be made someplace else. What are you going to do, vis a vis the union?

A I think we'll make it there. And if Ms. Cisowski's still continues in the Standard Plant, we're not going to call her up and say—the union, and say—Ms. Cisowski's operation is still in the Standard Plant.

Q Are you going to consider that a transfer of operations?

A It isn't a transfer of operations. Her operation is still there. She's still there. She still runs the presses.

Q But the work she normally would do is now being performed elsewhere?

A Yes. But Ms. Cisowski is not affected. Her operation [169] has not been transferred.

\* \* \*

[176] Q (By Mr. Zeman) So, as far as you know, in 1968 the whole swaging department went down?

A Mmhhh.

[177] Q That means that the swaging department that made the swaging machine went down to Waterbury? Is that it?

A As far as I know, it did.

Q Now, at that time, in '68, did you leave any of the swaging operation back in Torrington?

A I'm not aware of any. It may have been that I don't recall, but as far as I recall we met with the union to discuss it. Now, maybe we didn't move all of them down there. There may have been a couple of things left for a while. But, as far as I know, it all went down.

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